

STATE OF NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
13 DHC 5

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

BRADLEY S. TISDALE, Attorney,

Defendant

CONSENT
ORDER OF DISCIPLINE

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Walter E. Brock, Jr., Chair, and members Irvin W. Hankins, III and Karen Ray pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). Plaintiff was represented by Jennifer A. Porter. Defendant, Bradley S. Tisdale ("Tisdale") was represented by Alan M. Schneider. Both Plaintiff and Defendant stipulate and agree to the findings of fact and conclusions of law recited in this Consent Order and to the discipline imposed. Tisdale has freely and voluntarily stipulated to the foregoing findings of fact and consents to the conclusions of law and entry of the Order of Discipline. Tisdale freely and voluntarily waives any and all right to appeal the entry of this consent Order of Discipline.

Based upon the pleadings in this matter, the parties' stipulations of fact, and with the consent of the parties, the Hearing Panel hereby enters 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, Bradley S. Tisdale ("Tisdale"), was admitted to the North Carolina State Bar in 2003, 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 Rules of Professional Conduct.

3. During all or part of the relevant periods referred to herein, Tisdale was engaged in the practice of law in the State of North Carolina and maintained a law office in Franklin, Macon County, North Carolina.

4. Defendant was properly served with process and the matter came before the Hearing Panel with due notice to all parties.

5. Tisdale's law practice included closing real estate transactions.

6. From about November 2003 through January 2010, Tisdale utilized First Choice Closing, Inc. (FCC), owned and operated by N.F., a non-attorney, to prepare for and to conduct real estate closings for him. Tisdale gave N.F. signatory authority for his real estate trust account.

7. N.F. prepared all documents for the closings and wrote the checks for the closings.

8. Tisdale reviewed the closing documents, reviewed the title searches, signed all title certifications, and participated in some of the closings.

9. Tisdale was generally not involved in the day-to-day operations pertaining to the real estate closings or to the real estate trust account. Tisdale did sometimes respond to specific inquiries from lenders or clients regarding their closings.

10. Tisdale did not conduct monthly or quarterly reconciliations of his real estate trust account.

11. Tisdale did periodically ask N.F. for monthly bank statements and quarterly trust account reconciliations.

12. N.F. showed him documents purporting to be balanced monthly bank statements and quarterly reconciliations of the trust account but Tisdale did not check the documents for accuracy.

13. During the time N.F. was handling Tisdale's real estate trust account, N.F. took entrusted funds to which she was not entitled from the real estate trust account.

14. During this time, N.F. failed to disburse entrusted client funds to the appropriate recipients, including but not limited to failing to pay title insurance premiums.

15. During the time N.F. was handling the real estate trust account, the bank deducted bank service charges, wire transfer fees, and check charges from the balance in the real estate trust account. Tisdale did not deposit his own funds or other non-entrusted funds into the real estate trust account to cover these deductions by the bank during that time.

16. Because Tisdale did not adequately supervise N.F., her handling of entrusted funds, or her reconciliations of his real estate trust account, he did not know that N.F. was not making the disbursements of entrusted funds that were shown on the HUD-1 Settlement Statements, did not know that the bank deducted bank service charges, wire transfer fees, and check charges from the balance in the trust account, did not know that N.F. embezzled entrusted funds from the real estate trust account, and did not know that it was necessary for him to deposit his own funds or other non-entrusted funds into the trust account to cover such deductions.

Based upon the consent of the parties and the foregoing stipulated Findings of Fact, the Hearing Panel enters the following:

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant and the subject matter of this proceeding.
2. Defendant's conduct, as set out in the stipulated Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) as follows:
 - (a) By delegating the duties of preparing and conducting real estate transactions and the handling of funds for the real estate transactions such that he did not know that N.F. was not making the disbursements shown on HUD-1 Settlement Statements, did not know that the bank was deducting fees from the entrusted funds in the account, did not know that it was necessary for him to deposit his own or other non-entrusted funds into the account to cover the bank fees, did not know that funds were not being deposited into the account to cover such fees, and did not know that N.F. was embezzling entrusted funds from the trust account, Defendant failed to make reasonable efforts to ensure her conduct was compatible with his professional obligations in violation of Rule 5.3(b) and failed to properly maintain and disburse entrusted funds in violation of Rule 1.15-2(a) and (m); and
 - (b) By delegating to N.F. the responsibility to maintain required trust accounting records, including delegating to N.F. the responsibility to perform monthly and quarterly reconciliations of his real estate trust account, and by failing to adequately supervise N.F. therein, Defendant failed to conduct the requisite monthly and quarterly reconciliations of his trust account in violation of Rule 1.15-3(d).

Based upon the foregoing Findings of Fact and Conclusions of Law, and with the consent of the parties, the Hearing Panel enters the following

FINDINGS OF FACT REGARDING DISCIPLINE

1. Tisdale failed to make reasonable efforts to ensure that his nonlawyer assistant's conduct was compatible with his professional obligations in the provision of legal services to his clients in real estate transactions and the handling of entrusted funds in the real estate trust account for six years.
2. Although Tisdale occasionally spot checked a closing file, he was not involved sufficiently in the day to day preparation for and conducting of real estate transactions to know of, or to prevent, N.F.'s failure to properly disburse funds for closings.
3. Although Tisdale had established a system for reconciliations of his real estate trust account, these measures were not adequate to ensure compliance with his professional obligations.
4. Tisdale's excessive delegation without adequate supervision created circumstances that enabled N.F. to embezzle entrusted funds.
5. Tisdale took prompt and appropriate action when he became aware of N.F.'s misconduct.
6. Tisdale used his own funds to reimburse clients whose entrusted funds were embezzled by N.F. and to reimburse the trust account.
7. Tisdale has reported N.F. to the police.
8. Tisdale voluntarily self-reported the matter to the State Bar and has fully cooperated with the State Bar's review of his trust account and practice.
9. The failure to timely disburse title insurance premiums created the potential for significant harm should a title claim arise after the expiration of the title commitment, and potentially interfered with Tisdale's clients' goal of obtaining title insurance.
10. Tisdale has no prior discipline.
11. Tisdale was admitted to the North Carolina State Bar by comity in 2003. Previously, Tisdale had been licensed to practice law in Tennessee in 1987 and engaged in the practice of law in Tennessee until he moved to North Carolina in 2003.
12. Tisdale has indicated that he experienced personal or emotional problems during the time period at issue.

13. The Hearing Panel 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 on the Findings of Fact and Conclusions of Law above and the additional Findings of Fact Regarding Discipline, and with the consent of the parties, the Hearing Panel makes the following:

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel has carefully considered all of the different forms of discipline available to it. In addition, the Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(1) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors warrant suspension of Defendant's license:

- (a) Impairment of the client's ability to achieve the goals of the representation; and
- (b) Effect, and potential effect, of Defendant's conduct on third parties.

2. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(2) of the Rules and Regulations of the North Carolina State Bar and concludes that the factors present here do not require disbarment in this case.

3. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(3) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors are applicable in this matter:

- (a) Absence of dishonest or selfish motive;
- (b) Timely good faith efforts to make restitution;
- (c) Defendant engaged in multiple offenses;
- (d) Defendant engaged in a pattern of misconduct;
- (e) Effect of personal or emotional problems on the conduct in question;
- (f) Defendant's cooperative attitude toward the proceedings;
- (g) Defendant's remorse;
- (h) Good character and reputation; and

(i) Defendant has practiced law for about 25 years.

4. Defendant's failure to properly maintain, manage, and handle entrusted funds betrays a vital trust clients and the public place in attorneys and the legal profession.

5. The Hearing Panel has considered issuing an admonition, reprimand or censure but concludes that such discipline would not be sufficient discipline because of the gravity of the potential harm to the clients. The Panel further concludes that such discipline would fail to acknowledge the seriousness of the violations committed by Defendant and send the wrong message to attorneys regarding the conduct expected of members of the Bar in this State.

6. This Hearing Panel has considered lesser alternatives and concludes that a stayed suspension with conditions is necessary and sufficient to adequately protect the public.

7. For these reasons, this Hearing Panel finds that an order imposing discipline short of a stayed suspension of Defendant's law license would not be appropriate.

Based upon the foregoing Findings of Fact and Conclusions of Law and the Findings of Fact and Conclusions regarding discipline, and based upon the consent of the parties, the Hearing Panel enters the following:

ORDER OF DISCIPLINE

1. Defendant, Bradley S. Tisdale, is hereby suspended from the practice of law for two years, effective 30 days from service of this Order upon Tisdale.

2. Administrative fees and costs are taxed to Defendant.

3. The two-year suspension is stayed for a period of two years as long as Tisdale complies, and continues to comply during the period of the stay, with the following conditions:

- a. Tisdale pays all administrative fees and costs of this proceeding as assessed by the Secretary within 30 days after service of the statement of costs on him.
- b. Each month Tisdale shall provide the State Bar with the three-way reconciliation of all attorney trust accounts to which he has access using the reconciliation method described in the State Bar Lawyer's Trust Account Handbook on pages 35-40 (reference is to the edition last revised in May 2011). Tisdale shall provide the three-way reconciliation report, client ledgers for all clients with

funds in his trust account during that month, ledger for any personal funds maintained in the trust account for bank or credit card fees, his trust account ledger, and the bank statement, cancelled checks, and deposit slips for each month. These documents are due on the 15th day of the following month -- for example, the three-way reconciliation for the month of January is due on February 15;

- c. Tisdale will be the only signatory on each attorney trust account and on each operating account to which he has access. Tisdale will provide documentation showing he is the sole signatory on these accounts no later than thirty (30) days from the effective date of this order. Tisdale must sign all instruments disbursing funds from or depositing funds into any trust and operating account(s) to which he has access;
- d. Tisdale shall not violate any state or federal laws or any provisions of the Rules of Professional Conduct during the period of the stayed suspension;
- e. Tisdale shall respond to all State Bar requests for information as required by Rule 8.1(b) of the Rules of Professional Conduct by the earlier of the deadline stated in the communication or within 30 days of receipt;
- f. Tisdale shall timely comply with all State Bar membership and Continuing Legal Education requirements; and
- g. Tisdale shall keep the North Carolina State Bar membership department advised of his current home and business street (not P.O. Box) addresses and telephone numbers.

4. If Tisdale fails to comply with any one or more of the conditions set out in this Order of Discipline, then the stay of the suspension of his law license may be lifted as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

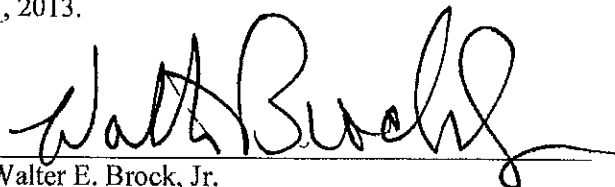
5. If the stay of the suspension is lifted and the suspension is activated for any reason, the DHC may enter an Order imposing such conditions as it deems necessary for the reinstatement of Tisdale's license at the end of the suspension. Furthermore, Tisdale must have complied with each of the following conditions precedent to reinstatement before he can be reinstated to the active practice of law:

- a. Submitted his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days from the effective date of the order activating his suspension;

- b. Complied with all provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the North Carolina State Bar Discipline and Disability Rules on a timely basis;
- c. Paid any outstanding disciplinary administrative fees and costs; and
- d. Within 15 days of the effective date of order activating the suspension Defendant shall have provided the State Bar with an address and telephone number at which clients seeking return of files could communicate with Defendant and obtain such files, and Defendant shall have promptly returned all files to clients upon request.

6. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout the period of the stayed suspension.


Signed by the Chair with the consent of the other Hearing Panel members, this the 14th day of May, 2013.


Walter E. Brock, Jr.
Chair, Disciplinary Hearing Panel

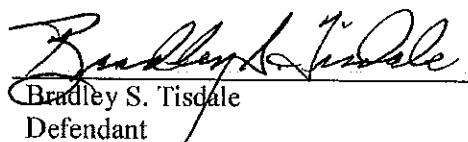
CONSENTED TO BY:


Jennifer A. Porter
Counsel for Plaintiff

4-23-2013
Date


Alan M. Schneider
Counsel for Defendant

4/23/2013
Date


Bradley S. Tisdale
Defendant

4/23/13
Date