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STATE OF NORTH CAROLINA
WAKE COUNTY

BEFORE THE COUNCIL
OF THE
NORTH CAROLINA STATE BAR
88 BCS 4

IN THE MATTER OF THE TENDER OF)
SURRENDER OF THE LICENSE OF)

ORDER OF DISCIPLINE

LELAND M. HEATH, JR.)

This matter was heard by the Council of the North Carolina State Bar pursuant to Rule 17 of Article IX of the Rules and Regulations of the North Carolina State Bar on Friday, July 15, 1988, upon the surrender of the license to practice law of Leland M. Heath, Jr. Pursuant to Rule 17(1) of Article IX of the Rules and Regulations of the North Carolina State Bar, Leland M. Heath, Jr. delivered to the Council an affidavit dated June 17, 1988 stating his desire to resign his license to practice law. Based upon the affidavit of Leland M. Heath, Jr. and the record, the Council makes the following FINDINGS:

- (1) On January 28, 1985, Thomas A. Hughes was injured after being struck by an automobile driven by the daughter of Donald Koon. Mr. Koon was insured by State Farm Insurance Company (hereinafter State Farm).
- (2) Sometime after the above-mentioned accident, Mr. Hughes employed Leland M. Heath, Jr. (hereinafter Heath) to represent him in his claim for damages resulting from the accident. Heath entered into negotiations with a representative of State Farm.
- (3) During 1985, Heath also began representing Dorothy B. Wooten in her capacity as personal representative in the estate of Harvey Lee Wooten, Sr., Lenoir County file number 85E258.
- (4) In his representation of the Wooten estate, Heath established an estate account at Wachovia Bank and Trust Company in Kinston, North Carolina which was assigned account number 4470-791940.

- (5) On March 10, 1986, Heath settled the Hughes matter with the representative of State Farm. A State Farm draft was prepared on that date in the sum of \$77,500.00 and mailed to Heath.
- (6) Also on March 10, 1986, Heath wrote a check to Harvey L. Wooten and David Damico, Attorney on the Wooten estate account as a final disbursement in the Harvey L. Wooten, Sr. estate in the sum of \$71,585.00.
- (7) On March 12, 1986, Heath received the State Farm draft and deposited it into the trust account maintained by the firm of Harrison and Heath at Wachovia Bank and Trust Co., account number 4477-034450 (hereinafter trust account).
- (8) On March 14, 1986, Heath wrote trust account check number 1077 to H. L. Wooten and Leland M. Heath, Jr., Trustee in the sum of \$71,585.00 designated as being for "Pay off-Loan."
- (9) No deposit had been made into the trust account of any funds actually received by Heath on behalf of the Wooten Estate. The funds used to pay check number 1077 were the funds deposited on behalf of Thomas A. Hughes.
- (10) On March 28, 1986, Heath had Thomas A. Hughes execute a release which he forwarded to the representative of State Farm.
- (11) On April 24, 1986, Heath had Dorothy B. Wooten sign the Final Account he had prepared for her in the Wooten estate.
- (12) Also on April 24, 1986, Heath wrote a check on the Wooten estate account in the sum of \$60,000.00 which he used to make a deposit into the firm's trust account. At the time he wrote this check, the estate account had no funds with which to pay this check.
- (13) On April 25, 1986, Heath wrote trust account check number 1128 in the sum of \$60,000.00 to Thomas Hughes and wife Betty Hughes designated as "Proceeds from insurance settlement."
- (14) On April 30, 1986, Heath closed a real estate transaction for his client, Stephen Snyder, in which Snyder purchased real property from Allen G. and Jane B. Walter. On that date, Heath deposited \$98,035.75 on Snyder's behalf in two deposits of \$12,535.75 and \$85,500.00.

- (15) Also on April 30, 1986, Heath wrote checks 1139, 1140, and 1141 on the trust account as disbursements in the Snyder closing. These checks totaled \$63,241.01.
- (16) On May 1, 1986, Wachovia sent Heath notice that the \$60,000.00 check drawn on the estate of Harvey L. Wooten was returned for insufficient funds. The balance in the trust account was thus reduced by \$60,000.00.
- (17) On May 2, 1986, Heath deposited \$15,000.00 in cash and a money order into the trust account which he designated as being for S. Snyder.
- (18) Also on May 2, 1986, Heath wrote check number 1144 on the trust account in the sum of \$2,481.75 to First Financial Savings and Loan Association designated as "Closing costs per HUD Statement - Synder."
- (19) On May 16, 1986, Heath deposited \$2,500.00 into the trust account designated as being deposited for Snyder.
- (20) On May 22, 1986, Heath deposited \$7,500.00 into the trust account designated as being for Snyder.
- (21) During most of May, 1986, the balance in the trust account was not sufficient to pay the remaining disbursements in the Snyder closing, even after the three May deposits mentioned above as being designated for Snyder.
- (22) On June 5, 1986, another deposit was made into the trust account in the sum of \$35,000.00 designated as being for Snyder.
- (23) The total of the deposits designated as being for Snyder was \$60,000.00, the amount paid to Hughes which was covered by the worthless check deposit.
- (24) On June 5, 1986 trust account check 1171 was written to Wachovia Mortgage Co. in the sum of \$31,349.16 to pay off Allen G. Walter's prior mortgage on the real estate purchased by Snyder.
- (25) On June 5 and 6, 1986 trust account checks 1173, 1174, 1175 and 1176 were written to pay disbursements in the Snyder loan closing.

- (26) On June 27, 1986 the remaining Snyder funds were removed from the trust account by check 1215 in the sum of \$636.83 payable to Leland M. Heath, Jr. designated as "Fee in Steven Snyder loan closing."

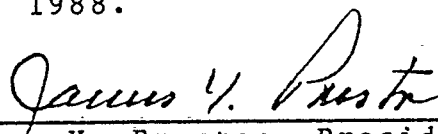
BASED upon the foregoing FINDINGS, the Council makes the following CONCLUSIONS:

- (1) The affidavit of tender of surrender of license of Leland M. Heath, Jr. should be accepted.
- (2) Heath's conduct, as set out in his affidavit, is grounds for discipline pursuant to N. C. Gen. Stat. §84-28(b)(2) in that Heath violated Rules 1.2(B) and (C), 10.1(A) and (C), and 10.2(E) of the Rules of Professional Conduct.

THEREFORE, upon Motion duly made and seconded, the Council ORDERS that:

- (1) The tender of surrender of the license of Leland M. Heath, Jr. is hereby accepted.
- (2) Leland M. Heath, Jr. is hereby DISBARRED.
- (3) The costs of this proceeding as assessed by the Secretary are taxed to Leland M. Heath, Jr..

This the 15th day of July, 1988.



James Y. Preston, President
The North Carolina State Bar