

NORTH CAROLINA :
WAKE COUNTY :

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
89 DHC 4

THE NORTH CAROLINA STATE BAR,)
)
Plaintiff)
)
v.)
)
MICHAEL R. RAMOS,)
)
Defendant)

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This cause was heard on Friday, June 16, 1989 by a duly appointed hearing committee of The Disciplinary Hearing Commission of The North Carolina State Bar consisting of John B. McMillan, Chairman, L. P. Hornthal, Jr. and Sam L. Beam. The North Carolina State Bar was represented by Fern E. Gunn and the defendant was represented by James L. Nelson. Based upon the admissions contained in the answer, the stipulations of the parties and the evidence presented at the hearing, the Committee finds the following facts by clear, cogent and convincing evidence:

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, Michael R. Ramos, was admitted to the North Carolina State Bar on September 7, 1982, 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 Shallotte, Brunswick County, North Carolina.
4. On July 18, 1987, Mark A. Lewis, attorney at law, closed a real estate transaction between the purchasers, Mr. and Mrs. Jack D.

Bryan, and the sellers, J. W. Robinson and his wife, Lillian Robinson, and A. H. Gainey, Jr. The Robinsons and Gainey were charged a \$35.00 closing fee for the preparation of the settlement statement, the preparation of a 1099-B form, and for the disbursement of funds to the parties.

5. At the time of the real estate closing, Mark Lewis and the defendant practiced law in a partnership known as Ramos and Lewis. The Ramos and Lewis partnership was formed on April 1, 1984.

6. At no time during his representation of the parties referred to above did Lewis limit his or the law firm's representation to either the sellers or the purchasers in the closing.

7. Lewis prepared a disbursement sheet for the closing transaction and he instructed his secretary to disburse the funds in accordance with the disbursement sheet. The Robinsons and Gainey were due \$60,289.71 from the closing transaction.

8. At Lewis' request, Check number 1595 in the amount of \$60,289.71 was issued from the Ramos and Lewis' trust account on July 23, 1987 to A. H. Gainey, Jr., J. W. Robinson and Lillian F. Robinson. This amount represented the sellers' proceeds from the sale of the property.

9. After recordation of the closing documents, the defendant learned that the law firm had closed a sale of property in which J. W. Robinson had some ownership interest.

10. Upon learning of Robinson's interest, the defendant contacted William F. Fairley, an attorney for Sea Pearl Seafood Corporation, Inc. (a creditor of J. W. Robinson) and advised him that the law firm had funds belonging in part to J. W. Robinson in the law firm's trust account. Sea Pearl Seafood Corporation, Inc. had a judgment against J. W. Robinson as docketed in Judgment Docket 12, Page 123 on May 14, 1984 in the office of the Brunswick County Clerk of Superior Court and the defendant had knowledge of that fact.

11. After the closing, defendant instructed Faith Ramos, an employee of the law firm, to void check number 1595. After the levy on defendant's trust account by the Sheriff's Department, Ms. Ramos issued check number 1596 from the law firm's trust account to the Brunswick County Clerk of Superior Court on July 23, 1987 in the amount of \$15,072.42. The name "J. W. Robinson" appears on the memorandum line on this check. Ms. Ramos issued check number 1597 from the law firm's trust account to A. H. Gainey, Jr. and Lillian F. Robinson on July 23, 1987 in the amount of \$45,217.29. This check represented the balance of the proceeds from the sale of property to Mr. and Mrs. Jack D. Bryan.

12. As a result of the defendant's communications to Fairley and Fairley's notification to the Brunswick County Sheriff's Department, the Sheriff's Department levied on the defendant's trust account and seized Robinson's share of the proceeds from the real estate closing. Pursuant to the levy by the Sheriff's Department and per the

defendant's instructions, a check was issued to the Clerk of Superior Court in the amount of \$15,072.42. The Clerk of Superior Court later endorsed this amount over to the Brunswick County Sheriff's Department to be held pursuant to the execution issued by the Clerk of Superior Court.

13. Neither Robinson nor his wife directed or consented to the defendant or his law firm causing their funds to be disbursed to the Clerk of Superior Court pursuant to a levy by the Sheriff's Department, such disbursement being for the benefit of Sea Pearl Seafood Corporation, Inc.

14. The funds of J. W. Robinson were not disbursed according to the settlement statement prepared by Lewis and those funds were disbursed to the Clerk of Superior Court pursuant to a levy by the Sheriff's Department.

15. Lewis had no prior knowledge that the defendant would contact the attorney for J. W. Robinson's creditor and inform him of J. W. Robinsons' funds being held in the law firm's trust account.

16. The defendant was aware of the Sea Pearl Seafood Corporation's judgment against J. W. Robinson because he had failed to list this judgment on a title opinion in an earlier, unrelated closing of property where J. W. Robinson was a predecessor in title. When this omission was brought to defendant's attention, (several weeks before the Robinsons and Gainey/Bryan closing), defendant contacted William Fairley, Sea Pearl Seafood's attorney, and determined the amount needed to release his client's property from Sea Pearl Seafood's lien. The defendant and Fairley agreed upon \$5,000.00 and defendant paid that amount out of his pocket.

17. Sea Pearl Seafood's judgment (including principal, interest, court cost and Sheriff's commission) against J. W. Robinson was \$32,460.13 as of July 13, 1987.

18. After an evidentiary hearing held in the matter of Sea Pearl Corporation, Inc. v. J. W. Robinson, - d/b/a Carolina Seafood (Brunswick County Superior Court Division, 83 CVS 271), the Honorable Henry W. Hight, Jr. found that Robinson was owner of one-fourth of the net proceeds (\$15,072.42) from the sale of the subject real property to Jack D. Bryan and wife and the amount was properly subject to levy and execution in satisfaction of lawful obligations of Robinson.

Based upon the FOREGOING FINDINGS OF FACT, the Committee makes the following conclusions of law:

A. By informing the attorney for J. W. Robinson's judgment creditor that the defendant's law firm held funds belonging to J. W. Robinson, the defendant revealed confidential information of his client and used the confidentiality of his client to the disadvantage of his client and to the advantage of a third person, in violation of Rules 4(B)(1), (2) and (3) of the Rules of Professional Conduct.

B. By alerting the attorney of J. W. Robinson's creditor of Robinson's funds in the defendant's law firm's trust account and not allowing the funds to be disbursed according to the settlement statement prepared by Lewis, the defendant has prejudiced his client during the course of the professional relationship, in violation of Rules 7.1(A)(1) and (3) of the Rules of Professional Conduct.

C. By causing the proceeds from the closing to be disbursed contrary to the settlement statement, the defendant failed to pay or deliver promptly to the law firm's clients, as directed by the clients, those funds belonging to them and to which they were entitled in violation of Rule 10.2(E) of the Rules of Professional Conduct.

Pursuant to Section 14(20) of the Rules of Discipline and Disbarment, the Hearing Committee has authorized the Chairman to sign these findings of fact and conclusions of law on behalf of all members.

This the 5th day of ^{July}~~June~~, 1989.



John B. McMillan, Chairman
For The Hearing Committee

NORTH CAROLINA :

WAKE COUNTY :

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
89 DHC 4

THE NORTH CAROLINA STATE BAR,)

Plaintiff)

v.)

MICHAEL R. RAMOS,)

Defendant)

ORDER OF DISCIPLINE

This cause was heard on Friday, June 16, 1989 by a duly appointed hearing committee of The Disciplinary Hearing Commission of The North Carolina State Bar consisting of John B. McMillan, Chairman, L. P. Hornthal, Jr. and Sam L. Beam. The North Carolina State Bar was represented by Fern E. Gunn and the defendant was represented by James L. Nelson. Based upon the findings of facts and conclusions of law entered in this cause and the evidence presented relative to the appropriate disciplinary sanction, the hearing committee makes the following additional findings:

1. Defendant has no record of prior discipline in North Carolina.

2. The misconduct which forms the basis of this discipline arises from an isolated incident and is an isolated incident of misconduct.

3. There was no evidence of any dishonest or selfish motive on the part of the defendant.

4. Defendant has made a full disclosure of his conduct to the North Carolina State Bar and has cooperated in its investigation of the grievance filed against him.

5. Defendant has shown remorse for the conduct which was the basis of the grievance.

6. The defendant acknowledged and accepted responsibility for his misconduct and, in testifying at the hearing, appeared to be candid and contrite.

00277

7. The circumstances which produced defendant's wrongful conduct were transitory and are not likely to recur.

Based upon the foregoing findings and the findings of fact and conclusions of law entered herein, the hearing committee enters the following order of discipline:

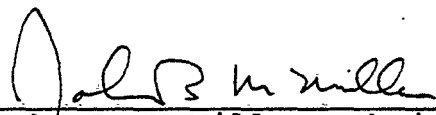
1. The appropriate discipline to impose for the conduct of the defendant is a public censure.

2. The chairman of the hearing committee shall sign such public censure and file it with the Secretary of the North Carolina State Bar pursuant to Section 23(A)(2) of Article IX of the Rules and Regulations of the North Carolina State Bar.

3. Defendant is taxed with the costs of this action as assessed by the Secretary of the North Carolina State Bar.

Signed by the undersigned chairman with the full accord and consent of the other members of the hearing committee this 5th day of June, 1989.

July



John B. McMillan, Chairman
For The Hearing Committee

NORTH CAROLINA :

WAKE COUNTY :

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
89 DHC 4

IN THE MATTER OF:

MICHAEL R. RAMOS,
ATTORNEY AT LAW

PUBLIC CENSURE

This public censure is delivered to you pursuant to Section 23 of Article IX of the Rules and Regulations of the North Carolina State Bar as ordered by a hearing committee of the Disciplinary Hearing Commission following a hearing in the above-captioned proceeding on June 16, 1989. The hearing committee found that you had violated certain of the Rules of Professional Conduct of the North Carolina State Bar.

On July 18, 1987, your partner Mark A. Lewis closed a real estate transaction between the purchasers, Mr. and Mrs. Jack D. Bryan, and the sellers, J. W. Robinson and his wife, Lillian Robinson and A. H. Gainey, Jr. The purchasers and the sellers were each charged by and paid your firm a closing fee for the preparation of the settlement statement, the preparation of a 1099-B form and for the disbursements of funds to the parties. At no time did your partner Mark Lewis limit his or the law firm's representation to either the sellers or the purchasers in the real estate transaction in question.

Your partner Mark Lewis prepared a disbursement sheet for the closing transaction and he instructed his secretary to disburse the funds in accordance with the disbursement sheet. These instructions were in accordance with instructions from the firm's clients and under those instructions, the Robinsons and Mr. Gainey were due \$60,289.71 from the transaction with the Robinsons being entitled to half of that sum and Mr. Gainey being entitled to the other half.

The closing took place on a Saturday and payment for the property was made by the purchasers by a personal check which was deposited in the firm's trust account pending the funds clearing. At some point subsequent to the recordation of the closing documents, you learned that your law firm had closed this sale and that J. W. Robinson had an ownership interest in the property sold and in funds being held in your trust account. Having had prior knowledge of the existence of a currently outstanding judgment against Mr. J. W. Robinson in favor of Sea Pearl Seafood Corporation, Inc., you contacted William F. Fairley,

00279

an attorney for Sea Pearl Seafood Corporation, Inc. and informed him that your law firm was holding funds belonging in part to J. W. Robinson in your law firm's trust account.

As a consequence of your informing Mr. Fairley of these facts, Mr. Fairley notified the Brunswick County Sheriff's Department and the Sheriff's Department levied execution on your firm's trust account and seized Mr. Robinson's share of the proceeds from the real estate closing. As a result, your firm's client J. W. Robinson failed to receive the \$15,072.42 which your firm held in its trust account in trust for him and his funds were not disbursed according to the settlement statement prepared by your law partner in accordance with Mr. Robinson's instructions.

This conduct which you have admitted violated numerous provisions of the Rules of Professional Conduct. In particular, you revealed confidential information of your client and used the confidential information of your client to the disadvantage of your client and to the advantage of a third person. By alerting the attorney for your client's creditor of your client's funds being held by your law firm's trust account and by not allowing the funds to be disbursed according to the settlement statement prepared by your partner, you have prejudiced your client during the course of the professional relationship. You have failed to pay or deliver promptly to your law firm's client, as directed by your client, funds belonging to him and to which he was entitled.

Just as surely as your actions violated the letter of the Disciplinary Rules referred to, it also violated the spirit of the Rules of Professional Conduct. Your conduct tended to cast disrepute upon not only yourself but also upon your fellow members of the Bar.

The hearing committee was ultimately persuaded that your misconduct in this case was generally the product of neglect in failing to realize that Mr. Robinson was the client of your firm in the transaction. Nevertheless, the committee is compelled to observe that a client who entrusts his or her property to a lawyer has an absolute right to expect that the property will be preserved and disbursed in accordance with the instructions of the client.

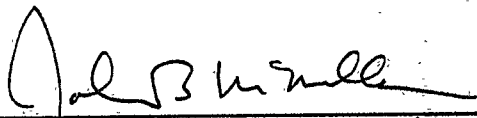
The fact that the hearing committee has chosen to impose the relatively moderate sanction of public censure should not be taken by you to indicate that the Disciplinary Hearing Commission in any way feels that your conduct in this matter was excusable. Were it not for the presence of several significant mitigating circumstances, it is likely that a more severe disciplinary sanction would have been imposed. The committee was particularly impressed by your cooperation with the State Bar with its investigation as well as the absence of any dishonest or selfish motives on your part. We were convinced that this was an isolated incident and the absence of a prior record of misconduct was a significant factor in our decision.

The North Carolina State Bar is confident that this public censure will be heeded by you, that it will be remembered by you, and

that it will be a benefit to you. Hopefully you will never again allow yourself to depart from strict adherence to the highest standards of the legal profession. Accordingly, it is hoped that this public censure, instead of being a burden, will actually serve as a profitable reminder that you should weigh carefully your responsibilities to the public, your clients, your fellow attorneys, and the Court to the end that you will ultimately be known as a respected member of your profession whose word and conduct can be relied upon without question.

Pursuant to Section 23 of Article IX of the Rules and Regulations of the North Carolina State Bar, it is ordered that a certified copy of this public censure be entered upon the judgment docket of the Superior Court of Brunswick County, North Carolina and filed with the Clerk of the Supreme Court of North Carolina.

This 5th day of ^{July}~~June~~, 1989.



John B. McMillan, Chairman
For The Hearing Committee