

NORTH CAROLINA

WAKE COUNTY

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B.E. JAMES, SEC.  
THE N. C. STATE BAR

BEFORE THE

DISCIPLINARY HEARING COMMISSION  
OF THE

NORTH CAROLINA STATE BAR

85 DHC 7

THE NORTH CAROLINA STATE BAR, )  
Plaintiff )

vs. )

JAMES W. HILLARD, )  
Defendant )

CONSENT ORDER  
OF DISCIPLINE

This matter coming before the undersigned Hearing Committee of the Disciplinary Hearing Commission pursuant to §14(8) of Article IX of the Rules and Regulations of the North Carolina State Bar; and it appearing that both parties have agreed to waive a formal hearing in this matter; and it further appearing that both parties stipulate and agree to the Findings of Fact and Conclusions of Law recited in this Consent Order and to the discipline imposed, the Hearing Committee hereby enters the following:

FINDINGS OF FACT

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, James W. Hillard, was admitted to the North Carolina State Bar in November, 1974 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 Code of Professional Responsibility of the North Carolina State Bar and of 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 Plymouth, Washington County, North Carolina.

4. In early 1978, Defendant was a member of the law firm of Hutchins, Romonet, Thompson, and Hillard in Plymouth, North Carolina.
5. At the request of his senior partner, Robert W. Hutchins, Defendant met with a client, Raleigh McNair, and agreed to conduct a title search for McNair.
6. McNair advised Defendant that he had a deed to approximately 77 acres of woodland about two miles south of Plymouth off Route 32. McNair further advised that an adjoining landowner, Jimmy Harrison, was claiming ownership of approximately 47 acres of McNair's 77 acre tract.
7. Defendant searched the title for his client, Raleigh McNair, and advised McNair that, in his opinion, McNair had good title to the 77 acres.
8. Defendant further advised McNair that it could cost McNair between \$4,000 and \$5,000 to settle the property dispute with Harrison through court proceedings.
9. Raleigh McNair advised Defendant that he did not have the money to pursue legal action to settle the dispute.
10. At some subsequent time, Defendant offered to purchase the property from McNair for \$2,800, the tax value listed for the undisputed portion of the property on the Washington County Property Record Card Defendant had obtained during his title search.
11. Raleigh McNair subsequently agreed to sell the property to Defendant for \$3,500.00.
12. Defendant prepared a general warranty deed for Raleigh McNair's signature transferring the property to J. W. Hillard. McNair executed the deed on April 27, 1978. Defendant paid McNair \$3,550.00 by check.
13. At the time that Defendant offered Raleigh McNair \$3,550.00 for McNair's property, Raleigh McNair was a client of Defendant's who had sought legal advice relating to that very piece of property.
14. Defendant did not pay fair market value for the property when he bought it from his client and failed to advise Raleigh McNair of alternatives

available that might bring fair market value for his property.

15. Defendant recorded his deed on April 28, 1978 in the Washington County Registry at book 267, page 54.
16. In May, 1979 Paul Miller agreed to pay \$30,000 for the property, knowing the problems that existed with the property.
17. On May 7, 1979, Defendant and his wife executed a general warranty deed to Paul W. Miller and wife, Mary E. Miller. Defendant received \$30,000 from the Millers' for the property.

Based upon the forgoing FINDINGS OF FACT, the Hearing Committee makes the following:

#### CONCLUSIONS OF LAW

Defendant's conduct constitutes grounds for discipline pursuant to N.C.G.S. §84-28(a) and (b)(2) in that Defendant violated the Disciplinary Rules of the Professional Responsibility as follows:

By failing to pay fair market value for Raleigh McNair's property or to fully advise Raleigh McNair of alternatives available to the client that might bring fair market value for his property, Defendant entered into a business transaction with a client wherein they had differing interests and failed to protect his client's interest in violation of Disciplinary Rule 5-104(A).

Based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW and upon the consent of the parties, the Hearing Committee enters the following:

#### ORDER OF DISCIPLINE

1. The Defendant, James W. Hillard is hereby suspended from the practice of law in the State of North Carolina for a period of eighteen months from the date this Consent Order of Discipline is filed.
2. The Defendant, James W. Hillard, is to surrender his license and membership card to the Secretary of the North Carolina State Bar.

3. The Defendant, James W. Hillard, is to comply with the provisions of §24 of Article IX of the Rules and Regulations of the North Carolina State Bar.
4. Pursuant to N.C.G.S. §84-28(c), the Defendant, James W. Hillard, must satisfy the following conditions to be reinstated at the expiration of his eighteen months suspension:
  - (a) Pay to Raleigh McNair the sum of seventeen thousand five hundred dollars (\$17,500) representing the amount of gain the Defendant received from his misconduct less certain taxes and expenses.
  - (b) If the Defendant James W. Hillard has not repaid Raleigh McNair all of the sum in (a) above within three years from this date, the Defendant, James W. Hillard, will be required to pass a bar exam administered by the North Carolina Board of Law Examiners in addition to fulfilling his obligation in paragraph (a) above.
5. The Defendant James W. Hillard, is to sign a Confession of Judgment pursuant to Rule 68.1 of the North Carolina Rules of Civil Procedure confessing judgment in the sum of \$17,500 to Raleigh McNair. Said Confession of Judgment shall be held in trust by the Secretary of the North Carolina State Bar for a period of three years from this date. If Raleigh McNair has not been paid all of his \$17,500 by the expiration of the three years, said Confession of Judgment may be filed in Washington County or any county of residence of the Defendant, James W. Hillard, or any county where the Defendant owns real property. At the time of filing credit shall be given for any payments that have been made by Defendant through the offices of the North Carolina State Bar. Interest at the legal rate shall begin to accrue on the Confession of Judgment at the expiration of eighteen months from this date.

This the 20 day of May, 1985.

W. Osborne Lee, Jr.  
W. Osborne Lee, Jr., Chairman

Angela Bryant  
Angela Bryant

John W. Beach  
John W. Beach

Consented To By:

James W. Hillard  
James W. Hillard, Defendant

Charles W. Ogletree  
Charles W. Ogletree  
Attorney for Defendant

A. Root Edmonson  
A. Root Edmonson  
Counsel for North Carolina State Bar