

STATE OF NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
12 DHC 30

THE NORTH CAROLINA STATE BAR,
Plaintiff,

v.

TINA PATRICK-BROADWAY, Attorney
Defendant.

CONSENT ORDER OF DISCIPLINE

This matter came before a hearing panel of the Disciplinary Hearing Commission composed of Sharon B. Alexander, Chair, Barbara B. Weyher, and Joseph Barlow Herget. Carmen H. Bannon represented Plaintiff, the North Carolina State Bar. Defendant, Tina Patrick-Broadway, was represented by Dudley A. Witt. Defendant waives a formal hearing in this matter. The parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order. The parties consent to the discipline imposed by this order. By consenting to the entry of this order, Defendant knowingly, freely and voluntarily waives her right to appeal this consent order or to challenge in any way the sufficiency of the findings. Based on the foregoing and on the consent of the parties, the Hearing Panel hereby makes by clear, cogent and convincing evidence the following:

FINDINGS OF FACT

1. 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. Defendant, Tina Patrick-Broadway, was admitted to the North Carolina State Bar in 1994 and is an Attorney at Law 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 the relevant period referred to herein, Patrick-Broadway was actively engaged in the practice of law in Charlotte, Mecklenburg County, North Carolina.
4. Patrick-Broadway was properly served with process and received due notice of the hearing in this matter.
5. In connection with her law practice, Patrick-Broadway maintained a trust account at First Citizens Bank (account number ending 9258).
6. For this trust account, Patrick-Broadway did not maintain:

- (a) legible front and back images of cancelled trust account checks;
- (b) complete records listing the source and date of all deposits into the account; or
- (c) accurate ledgers reflecting all receipts and disbursements of entrusted funds for each of her clients.

7. Patrick-Broadway relied on a non-lawyer assistant, Rene Hensley, to oversee the trust account, maintain client ledgers, and perform trust account reconciliations. Patrick-Broadway did not review cancelled trust account checks or employ any other system designed to verify the accuracy of the reconciliations performed by Hensley.

8. In September 2007, Patrick-Broadway was the closing lawyer for Shirley Braddy's purchase of a home. Patrick-Broadway collected funds at closing for the 2007 taxes on the property, but did not pay the funds to the county tax collector.

9. In March 2009, after Braddy determined that her 2007 property taxes had not been paid, she contacted Patrick-Broadway to request a refund of the amount she had collected for taxes. In the course of researching Braddy's request, Patrick-Broadway conferred with Hensley, who stated that the trust account check to the tax collector had cleared.

10. Upon further review, Patrick-Broadway determined that the check to the tax collector for Braddy's property taxes had not cleared the trust account. Despite the fact that Hensley had supplied her with inaccurate information concerning the payment of Braddy's taxes, Patrick-Broadway took no additional steps to determine why Hensley falsely stated that Braddy's taxes had been paid nor did she make additional efforts to oversee Hensley's management of the trust account.

11. Hensley was employed by Patrick-Broadway through November 2009. When Hensley was terminated, all paper copies and digital backups of trust account reconciliations previously performed by Hensley went missing.

12. Patrick-Broadway did not examine the trust account at the time Hensley was fired to ensure that her clients' money had been safeguarded. Patrick-Broadway did not reconcile her trust account monthly or quarterly after she fired Hensley.

13. In October 2010, in the course of responding to a grievance filed by Braddy with the State Bar, Patrick-Broadway discovered that Hensley had embezzled from the trust account. Patrick-Broadway estimated that Hensley embezzled \$14,000.00, but the State Bar's examination of checks drawn on the trust account reflected that the amount was at least \$19,300.00.

14. Despite efforts by Patrick-Broadway and the State Bar allowing Patrick-Broadway more than one year to reconcile the account, Patrick-Broadway failed to produce quarterly reconciliations that completely and accurately identified the client balances in her trust account at First Citizens Bank. Patrick-Broadway contends that she was unable to reconcile the account due to the loss of records noted in paragraph 11, above.

15. When Patrick-Broadway discovered Hensley's embezzlement, she stopped depositing entrusted funds into the existing trust account at First Citizens. In December 2010, she opened a new account (account number ending 7058) at SunTrust Bank (hereafter "the new trust account").

16. Patrick-Broadway again delegated management of the new trust account to a non-lawyer assistant and failed to employ a system designed to verify that the non-lawyer assistant was properly maintaining and documenting entrusted funds.

17. Neither Patrick-Broadway nor her employees reconciled the new trust account from the time it was opened in December 2010 through December 2011, when the State Bar requested documentation showing that the new trust account was being properly reconciled.

18. When Patrick-Broadway reconciled the new trust account for the first time in December 2011, she discovered that:

- (a) \$1,332.00 in cash received for a May 2011 closing had not been deposited into the new trust account and could not be located. Patrick-Broadway's non-lawyer assistants had access to the cash, but they disclaimed any knowledge of why it wasn't deposited into the trust account. Upon discovering that the \$1,332.00 was missing, Patrick -Broadway immediately deposited personal funds to replenish the deficit.
- (b) On six occasions throughout 2011, the bank deducted funds from the new trust account to cover the cost of checks. There were insufficient funds in the account belonging to Patrick-Broadway to cover these deductions, which totaled more than \$1,500.00.
- (c) Several checks related to August 2011 closings had been temporarily misplaced and were not deposited into the new trust account until months later.

19. On 21 December 2011, the Wake County Superior Court entered a consent order of preliminary injunction which, among other things, required Patrick-Broadway to "provide the State Bar within 90 days with identification of all funds held in trust in any trust account," including client ledgers and contact information for each client with money in the account. Patrick-Broadway did not comply with this provision of the order.

20. In December 2011, Patrick-Broadway issued trust account checks paying title insurance premiums for over one hundred real estate closings. She had collected the funds to pay these premiums from her clients at closing.

21. Seventy-three of the closings had occurred more than two years prior to Patrick-Broadway's payment of the title premium; some occurred as far back as 2004. For these closings, the title insurance commitment period lapsed long before Patrick-Broadway issued payment of the premium to the title company.

22. The title insurance premiums were due before the end of the commitment period. The insurers were not obligated to issue title insurance after the commitment period lapsed. By

failing to pay the premiums on a timely basis, Patrick-Broadway placed her clients at risk of not obtaining title insurance coverage.

Based on the foregoing Findings of Fact and with the consent of the parties, the Hearing Panel makes the following:

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant, Tina Patrick-Broadway, and over the subject matter.

2. Defendant's conduct, as set forth in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(1) and N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct as follows:

- (a) By failing to maintain legible images of cancelled checks, individual client ledgers, or sufficiently detailed deposit records, Patrick-Broadway violated Rule 1.15-3(b);
- (b) By failing to perform monthly and quarterly reconciliations of her trust accounts, Patrick-Broadway violated Rule 1.15-3(d);
- (c) By failing to make reasonable efforts to ensure that her non-lawyer assistants' management of her trust accounts was compatible with the Rules of Professional Conduct, Patrick-Broadway violated Rule 5.3(b);
- (d) By failing to timely pay Braddy's property taxes, Patrick-Broadway failed to promptly pay entrusted funds to a third party in violation of Rule 1.15-2(m);
- (e) By failing to completely identify all client funds in her trust accounts and provide this information to the State Bar as requested by the Bar and ordered by the court, Patrick-Broadway failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b) and knowingly disobeyed an obligation under the rules of a tribunal in violation of Rule 3.4(c); and
- (f) By failing to timely pay title insurance premiums and obtain title policies for at least seventy-three of her real estate clients, Patrick-Broadway failed to promptly pay entrusted funds to a third party in violation of Rule 1.15-3(m) and failed to act with reasonable diligence on behalf of her clients in violation of Rule 1.3.

Based on the foregoing Findings of Fact and Conclusions of Law and the consent of the parties, the Hearing Panel makes the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. Patrick-Broadway's failure to properly supervise her staff and failure to ensure client funds were being properly protected caused actual significant harm in that it enabled her staff to embezzle client funds as described above.

2. In August 2011, while the State Bar's investigation of the trust account mismanagement described in paragraphs 5-14 above was ongoing, Patrick-Broadway erroneously transferred \$212,647.05 out of her trust account. Patrick-Broadway intended to transfer this amount from one trust account to another, but inadvertently transferred it into her operating account. Patrick-Broadway left these entrusted funds in her operating account and on several occasions the balance in the account dropped slightly below \$212,647.05. Although Patrick-Broadway failed to safeguard these funds, there is no evidence that she intentionally converted entrusted funds to her own benefit. This conduct, however, is an additional example of Patrick-Broadway's ongoing pattern of failing to adequately safeguard client funds.

3. On several occasions in September and October 2011, while the State Bar's investigation of the trust account mismanagement described in paragraphs 5-14 was ongoing, Patrick-Broadway's staff deposited entrusted funds into the operating account rather than the trust account. This is further evidence that—even after she was on notice regarding the actual harm caused by failure to closely monitor her employees' handling of entrusted funds—Patrick Broadway still did not implement effective staff training and oversight.

4. A lawyer's mismanagement of entrusted funds erodes the confidence clients place in attorneys who handle their affairs. As a result, such conduct harms the profession as a whole.

5. Patrick-Broadway's failure to pay Braddy's property taxes caused significant actual harm to Braddy, in that it resulted in a shortage in Braddy's mortgage escrow account and consequent increase in Braddy's minimum monthly payments to her mortgage lender.

6. Patrick-Broadway's failure to timely obtain title insurance policies caused a risk of significant harm to her clients, in that the title insurance companies were not obligated to issue the policies after the six-month commitment period expired.

7. Although Patrick-Broadway's failure to properly identify, account for, and maintain entrusted funds created a foreseeable risk of harm to the clients whose money she held in trust, Patrick-Broadway's mismanagement of her trust account does not reflect dishonest or selfish intent.

8. Patrick-Broadway deposited significant personal funds into her trust account in an effort to protect client funds when she realized there was a deficit in the trust account.

9. Although Patrick-Broadway did not completely identify the client funds in her First Citizens trust account and did not reconcile the account, she made some efforts to identify the entrusted funds therein.

10. Patrick-Broadway has no prior disciplinary record.

Based on the foregoing Findings of Fact, Conclusions of Law, Findings of Fact Regarding Discipline, and the consent of the parties, the Hearing Panel enters the following:

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel has carefully considered all of the different forms of discipline available to it, including admonition, reprimand, censure, suspension and disbarment.

2. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w) and determined the following factors are applicable:

- (a) Intent of the defendant to commit acts where the potential harm was foreseeable;
- (b) Impairment of the client's ability to achieve the goals of the representation;
- (c) Absence of prior disciplinary offenses;
- (d) Absence of dishonest or selfish motive;
- (e) Timely good faith efforts to rectify the consequences of misconduct;
- (f) A pattern of misconduct and multiple offenses; and
- (g) Experience in the practice of law.

3. A censure, reprimand, or admonition would be insufficient discipline because of the significant harm and/or potential harm to clients and the profession caused by Defendant's conduct.

4. Although Defendant's conduct is serious enough to warrant more discipline than a censure, it does not warrant an active suspension of her license.

5. Patrick-Broadway's failure to supervise her non-attorney assistant and failure to protect client funds posed a significant threat of harm to her clients and, if repeated, poses significant potential harm to future clients and the reputation of the profession.

6. In order to protect the public, it is necessary to enter an order of discipline with a significant suspension of Patrick-Broadway's law license that is stayed only as long as Patrick-Broadway complies with reasonable conditions.

7. The public will be adequately protected by suspension of Defendant's license, stayed for a period of time with conditions imposed upon Defendant to ensure protection of the public and continued compliance with the Rules of Professional Conduct. Among other things, she must demonstrate that she is properly maintaining and accounting for any funds received by her in trust or in a fiduciary capacity.

8. A stayed suspension of Defendant's law license is warranted insofar as entry of an order imposing less severe discipline would fail to acknowledge the seriousness of the misconduct and would send the wrong message to attorneys and the public about the conduct expected of members of the Bar of this State.

Based on the foregoing Findings of Fact, Conclusions of Law, Findings of Fact Regarding Discipline, Conclusions of Law Regarding Discipline, and the consent of the parties, the Hearing Panel hereby enters the following:

ORDER OF DISCIPLINE

1. The law license of Defendant, Tina Patrick-Broadway, is hereby suspended for four years. The suspension shall be stayed for a period of three years as long as Defendant complies with the conditions identified in paragraph 2, below. If Defendant complies with the conditions of paragraph 2 below for the three year period of the stayed suspension, she will have completed her obligations under this Consent Order of Discipline and will be allowed to practice law unrestricted by the terms of this Order.

2. The suspension of Defendant's law license shall be stayed as long as Defendant complies and continues to comply with the following conditions:

(a) Patrick-Broadway, at her own expense, will have any and all accounts into which she has deposited client funds (hereinafter "trust accounts") audited by a Certified Public Accountant within 90 days of service of this order. (These audits are referred to herein as "the CPA's initial audits").

- i. The CPA's initial audits must identify the beneficial owners of the funds currently in Defendant's trust accounts and establish whether the balances in the accounts are sufficient to cover all client funds defendant should be holding in trust.
- ii. Patrick-Broadway will provide the CPA's initial audit reports to the State Bar within ten days of receipt.
- iii. Patrick-Broadway will remedy any deficiencies identified in the CPA's initial audits and will bring her trust accounts into compliance with the Rules of Professional Conduct within 30 days of receipt of the audit reports. Patrick-Broadway will submit proof of any remedial action to the State Bar and to the CPA no later than 30 days after receipt of the CPA's reports. Said remediation shall include replenishing any deficit in the accounts and properly disbursing entrusted funds as described in paragraphs 2(b) and (c), below.
- iv. If remedial action was required, the CPA will provide to the Office of Counsel a final audit report certifying that Patrick-Broadway's trust accounts are in compliance with the Rules of Professional Conduct no later than 30 days after receipt of the remedial information from Patrick-Broadway.

(b) Within 30 days after receipt of the CPA's initial audit reports, Patrick-Broadway shall disburse all funds in her existing trust accounts to the beneficial owners of

the funds, or to third parties as directed by the beneficial owners. If there are funds in the accounts for which the beneficial owner(s) cannot be identified, Patrick-Broadway shall identify, maintain, and account for those unidentified funds until the beneficial owners are determined or until the funds are deemed abandoned, at which point Patrick-Broadway shall escheat the funds.

- (c) If the CPA's initial audits determine that the balance in any of Defendant's trust accounts is less than the total amount of funds she should have in trust for clients, Defendant shall be personally responsible for replenishing the deficits in the trust accounts. Defendant must deposit funds to remedy any identified shortfalls in the trust accounts within 30 days after receipt of the CPA's report.
- (d) After the initial audit of existing accounts, Defendant shall have a CPA audit her trust account on a quarterly basis to ensure Defendant's compliance with the Rules of Professional Conduct. In conjunction with the quarterly audits:
 - i. The CPA must report quarterly to the Office of Counsel concerning the compliance of Defendant's trust account(s) with the Rules of Professional Conduct, with a copy of the report(s) sent simultaneously to Defendant. The CPA's reports are due no later than 30 days after the end of each quarter (first quarter's report due April 30, second quarter's report due July 30, third quarter's report due October 30, and fourth quarter's report due January 30);
 - ii. If any of the CPA's quarterly reports referenced in paragraph (d)(i) above note any irregularities or deficiencies, Defendant shall take all remedial action necessary to bring the trust account(s) into compliance with the Rules of Professional Conduct and shall provide proof of the remedial action and compliance to the Office of Counsel of the State Bar and to the CPA within 30 days of the date of the CPA's report;
 - iii. If any of the CPA's quarterly reports referenced in paragraph (d)(i) above note any irregularities or deficiencies in Defendant's handling of entrusted funds, the CPA shall provide a subsequent report regarding whether Defendant's remedial actions were sufficient and whether Defendant's account(s) has been brought into compliance with the Rules of Professional Conduct. The CPA shall provide this report regarding remedial measures to the Office of Counsel within 30 days of Defendant's provision of proof of remedial action.
- (e) All CPA evaluations, reports, and services referred to herein will be completed and submitted at Defendant's sole expense.
- (f) It is Defendant's sole responsibility to ensure the CPA completes and timely submits the reports as required herein. Failure of the CPA to submit any report required by this Order shall be grounds to lift the stay and activate the suspension;

- (g) Defendant shall arrange for an active member in good standing of the North Carolina State Bar who has been approved by the Office of Counsel and practices in the county of her practice to serve as her practice monitor. Within 30 days after she is served with this order, Defendant must supply the Office of Counsel with a letter from the approved monitoring attorney confirming his or her agreement to: (a) meet with Patrick-Broadway monthly to review Patrick-Broadway's cases; (b) provide supervision to ensure that Patrick-Broadway timely and completely handles client matters; and (c) provide written quarterly reports of this supervision to the Office of Counsel on the following dates as they occur during the duration of the stay of the suspension: January 30, April 30, July 30, and October 30. Patrick-Broadway will be responsible for the cost, if any, charged by the monitor for this supervision.
- (h) Defendant shall successfully complete three hours of continuing legal education in the area of trust account management within the first year after the effective date of this order. Defendant shall provide written proof of successful completion of the CLE courses to the State Bar within ten days of completing the courses. This is in addition to the standard annual CLE requirements;
- (i) Defendant shall not violate the Rules of Professional Conduct or the laws of the United States or of any state or local government during her suspension;
- (j) Defendant shall keep the North Carolina State Bar Membership Department advised of her current business and home addresses and shall notify the Bar of any change in address within ten days of such change;
- (k) Defendant shall respond to all communications from the North Carolina State Bar, including communications from the Attorney Client Assistance Program, within thirty days of receipt or by the deadline stated in the communication, whichever is sooner, and shall participate in good faith in the State Bar's fee dispute resolution process for any petition of which she receives notice after the effective date of this Order;
- (l) Defendant shall promptly accept service of all certified mail from the State Bar that is sent to her; and
- (m) Defendant shall timely comply with all State Bar Membership and Continuing Legal Education requirements.

3. If Defendant fails to comply with any of the conditions of the stayed suspension provided in paragraph 2(a) – (m) above, the stay of the suspension may be lifted as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

4. If the stay granted herein is lifted or the suspension of Defendant's license is activated for any reason, before seeking reinstatement of her license to practice law, Defendant must show by clear, cogent and convincing evidence that she has complied with each of the following conditions:

- (a) Defendant satisfied the initial audit, replenishment, and disbursement conditions set forth in paragraphs 2(a), (b), and (c), above.
- (b) Defendant completed three hours of trust accounting CLE and arranged for a practice monitor as set forth in paragraphs 2(e) and (h), above.
- (c) Defendant submitted her license and membership card to the Secretary of the North Carolina State Bar within thirty days after the date of the order lifting the stay and/or activating the suspension of her law license;
- (d) Defendant complied with all provisions of 27 N.C.A.C. 1B § .0124 following the order lifting the stay and/or activating the suspension of her law license;
- (e) Defendant kept the North Carolina State Bar Membership Department advised of her current business and home addresses and notified the Bar of any change in address within ten days of such change;
- (f) Defendant responded to all communications from the North Carolina State Bar, including communications from the Attorney Client Assistance Program, within thirty days of receipt or by the deadline stated in the communication, whichever is sooner, and participated in good faith in the State Bar's fee dispute resolution process for any petition of which she received notice after the effective date of this Order;
- (g) Defendant promptly accepted all certified mail sent to her by the State Bar;
- (h) That at the time of her petition for stay, Defendant is current in payment of all Membership dues, fees and costs, including all Client Security Fund assessments and other charges or surcharges the State Bar is authorized to collect from her, as well as all judicial district dues, fees and assessments;
- (i) That at the time of her petition for stay, there is no deficit in Defendant's completion of mandatory CLE hours, in reporting of such hours, or in payment of any fees associated with attendance at CLE programs;
- (j) Defendant has not violated the Rules of Professional Conduct or the laws of the United States or of any state or local government during her suspension;
- (k) Defendant has paid the administrative fees and costs of this proceeding as reflected on the statement of costs served upon her by the Secretary of the State Bar; and
- (l) Defendant has complied with any other conditions deemed necessary for reinstatement imposed by the Hearing Panel pursuant to the order lifting the stay of the suspension of Defendant's law license.

5. Any order of the Administrative Committee of the North Carolina State Bar placing Patrick-Broadway in inactive status for any reason shall toll the running of the suspension, the period of the stay of the suspension, and Patrick-Broadway's obligation to comply with the terms of the stay of the suspension under this order. Upon Patrick-Broadway's reinstatement to active status by the Administrative Committee, the tolling of the running of the suspension and the stay of the suspension under this order shall be lifted, at which time Patrick-Broadway's obligation to comply with the conditions of the stay of the suspension in this order will resume.

6. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout the period of the stayed suspension.

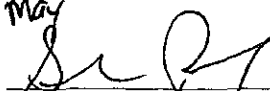
7. Defendant is taxed with the administrative fees and costs of this action as assessed by the Secretary, which Defendant shall pay within thirty days of service of the notice of costs upon Defendant.

8. This Order shall be effective on the date it is served upon Defendant.

Signed by the undersigned Chair with the knowledge and consent of the other members of the Hearing Panel, this is the ~~07~~ day of ~~April~~, 2013.

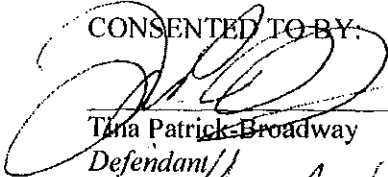
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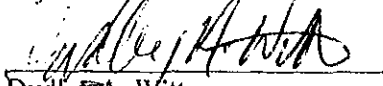


Sharon B. Alexander, Chair
Hearing Panel

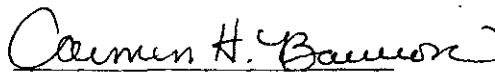
CONSENTED TO BY:



Tina Patrick-Broadway
Defendant



Dudley A. Witt
Attorney for Defendant



Carmen H. Bannon
Attorney for Plaintiff