FILED

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

WAKE COUNTY

2011 AUG 32 AM 10:11

FILE NO.: 11 CVS 13457

WAKE COUNTY, C.S.C.

THE NORTH CAROLINA STATE BAR, Petitioner v. MELISSA A. GOLDSMITH, Attorney, Respondent	TEMPORARY RESTRAINING ORDER

THIS MATTER came on to be heard and was heard by the undersigned Judge of Superior Court of Wake County pursuant to a Motion for Temporary Restraining Order and Petition for Preliminary Injunction filed by the North Carolina State Bar. Petitioner, the North Carolina State Bar was represented by Jennifer A. Porter. The Respondent, Melissa A. Goldsmith, Did not appear and was not represented. Based upon the Motion and the affidavit attached thereto, the Court makes the following:

FINDINGS OF FACT

1. Respondent, Melissa A. Goldsmith ("Goldsmith"), was licensed to practice law in North Carolina in 2004.

2. The State Bar's membership database shows the following address for Goldsmith: 2847 Pleasant Grove Church Road, Hendersonville, NC 28739.

3. Goldsmith maintained an attorney trust account, account number ending with 4974, and an operating account, account number ending with 1447, at First Citizens Bank.

4. Goldsmith was the closing attorney for three real estate transactions in May 2007 involving buyer America's Home Place, Inc. Goldsmith collected $75.00 in each of these closings for the title insurance premium. Goldsmith failed to submit the final opinion of title and the title insurance premium to the title insurance company and failed to obtain title insurance policies for America's Home Place, Inc. Goldsmith has failed to respond to America's Home Place, Inc.'s inquiry on this matter.

5. Goldsmith was served with a formal letter of notice from the North Carolina State Bar on February 2, 2011, requiring her response regarding the three real estate transactions at issue and requiring production of trust account records showing she has continually maintained the title insurance premiums in trust from the time of the closings forward.

6. Goldsmith failed to respond to the letter of notice and failed to provide the required trust account records.

7. On May 25, 2011, Jennifer Porter, a deputy counsel for the State Bar, e-mailed Goldsmith at lawyergoldsmith@gmail.com and notified her that, due to her failure to respond, the State Bar would proceed with subpoenaing Goldsmith's trust account records.

8. Goldsmith contacted Porter by telephone on June 7, 2011. During that conversation, a deadline of June 24, 2011 was set for production of the trust account records and a deadline of July 8, 2011 was set for responding to the letter of notice.

9. Goldsmith failed to provide the required trust account records by June 24, 2011.

10. Porter e-mailed Goldsmith at 3:56 on June 24, 2011 to remind her that the trust account records were due on that date. Goldsmith failed to respond to Porter's e-mail June 24, 2011to her.

11. Goldsmith failed to respond to the letter of notice by the July 8, 2011 deadline.

12. As of the date of this order, Goldsmith has failed to provide the required trust account records and failed to respond to the letter of notice to the State Bar.

13. The State Bar has subpoenaed records from First Citizens Bank for Goldsmith's trust account and operating account.

14. In its examination of Goldsmith's trust account, the State Bar found that Goldsmith failed to identify the client on deposits and on checks written from the trust account. Goldsmith's failure to identify the clients for which deposits and disbursements were being made, combined with her failure to provide the requested records to the State Bar, prevents the State Bar from being able to identify whose funds are currently held in her trust account. The State Bar has accordingly been unable to confirm that Goldsmith has appropriately maintained the title insurance premiums at issue in trust since the closings in 2007 through the present time.

15. The last activity in Goldsmith's trust account was June 18, 2010. Prior to that the last activity in her trust account was October 2009. The last deposit of funds into the trust account was in September 2009. The current balance of the trust account is $3,427.57.

16. The State Bar also examined Goldsmith's operating account, which Goldsmith used for personal expenses. Goldsmith withdrew the last amount of cash from this account, resulting in a zero balance, on June 27, 2011.

Based upon the foregoing findings, the Court makes the following:

CONCLUSIONS OF LAW

1. Goldsmith engaged in misconduct by failing to appropriately manage the funds in her trust account by her lack of identification of the clients for which she received and disbursed funds, failing to timely complete the final title opinions and disburse the title insurance premiums from the 2007 transactions, and by failing to respond to the formal inquiry of the State Bar regarding her management of entrusted funds. Goldsmith's conduct is in violation of the North Carolina State Bar Rules of Professional Conduct and constitutes grounds for discipline under N.C. Gen. Stat. § 84-28(b).

2. Prompt action, pursuant to N.C. Gen. Stat. § 84-28(f), is necessary to preserve the status quo and to ensure that no entrusted or fiduciary funds are mishandled.

3. Goldsmith should be enjoined from accepting any further funds from or on behalf of clients or other individuals in a fiduciary capacity, from withdrawing funds from and/or writing checks against any account in which client or fiduciary funds have been deposited, and from directing any employee or agent to withdraw funds from and/or draw a check on any account in which client or fiduciary funds have been deposited, except as expressly authorized by this order.

4. To assist the State Bar's analysis of her trust and operating accounts, Goldsmith should provide the State Bar with records of all accounts in which client or fiduciary funds have been deposited. Goldsmith shall provide the N C State Bar with all records of all accounts in which mishandled fiduciary funds were deposited.

5. Goldsmith should not be permitted to serve in any fiduciary capacity, including trustee, escrow agent, personal representative, executor or attorney-in-fact until further order of this Court.

THEREFORE, IT IS HEREBY ORDERED:

1. Melissa A. Goldsmith is enjoined from accepting any further funds from or on behalf of clients or other individuals in a fiduciary capacity; writing checks against or otherwise disbursing or withdrawing funds from any account in which client or fiduciary funds have been deposited; and/or directing any employee or agent to draw a check on or otherwise disburse or withdraw funds from any account in which client or fiduciary funds have been deposited until permitted by subsequent orders of the Court.

2. This matter is scheduled for a hearing on the Petitioner's Petition for a Preliminary Injunction on the 12th day of September, 2011 at 10:00 A.M in the Wake County Courthouse, Courtroom 10-C in Raleigh, North Carolina.

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3. Melissa A. Goldsmith or any other person having custody or control of records relating to any account into which client or fiduciary funds have been deposited shall immediately produce to the North Carolina State Bar at its location in Raleigh, North Carolina for inspection and copying all of Goldsmith's bank records for any account into which any trust or fiduciary funds have been deposited, including but not limited to bank statements, canceled checks, deposit slips, identification of deposited items, client ledger sheets and any other records relating to the receipt and disbursement of client or fiduciary funds, at the State Bar's request.

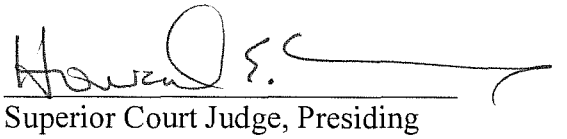
4. If Goldsmith does not have possession of the minimum records required to be maintained regarding trust and fiduciary funds pursuant to Rule 1.15-3 of the Rules of Professional Conduct, she shall direct the bank(s) where her trust account(s) are maintained, within 10 days of the date of this order, to copy and transmit any such missing records directly to the North Carolina State Bar, at Goldsmith's expense.

5. Goldsmith, or any other person having custody or control over records relating to individuals for whom Goldsmith has provided legal services shall produce to the North Carolina State Bar at its location in Raleigh, North Carolina for inspection and copying all records and documents relating any individuals or entities for whom Goldsmith has provided legal or fiduciary services, including but not limited to client files, client ledgers, disbursement summaries, settlement statements, HUD-1 Settlement Statements, billing statements, memoranda and receipts, at the State Bar's request. Current client files shall be produced within 24 hours of demand by the State Bar and closed client files shall be produced within 3 days of demand by the State Bar.

6. Goldsmith shall not serve in any fiduciary capacity, including trustee, escrow agent, personal representative, executor or attorney-in-fact until further order of this Court.

7. This Temporary Restraining Order shall remain in effect until the 12th day of September, 2011 unless extended by further orders of this Court.

THIS the 1st day of September, 2011 at 10:35 A.M.



Superior Court Judge, Presiding