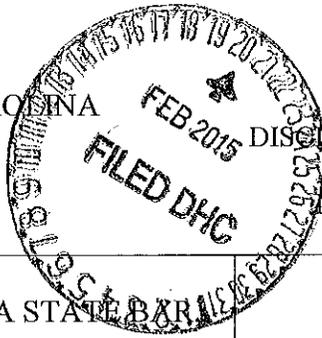


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
14 DHC 31

THE NORTH CAROLINA STATE BAR

Plaintiff

v.

JAMES W. THOMPSON, III, Attorney,

Defendant

CONSENT ORDER OF
DISCIPLINE

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Fred M. Morelock, Chair, and members Shirley L. Fulton and Percy L. Taylor, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). Plaintiff was represented by Mary D. Winstead. Defendant, James W. Thompson, III, was represented by James K. Pendergrass. Both Plaintiff and Defendant stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Defendant has freely and voluntarily stipulated to the foregoing findings of fact and consents to the conclusions of law and entry of the order of discipline. Defendant freely and voluntarily waives any and all right to appeal the entry of this consent order of discipline.

Based upon the pleadings in this matter, the parties' stipulations of fact, and with the consent of the parties, the Hearing Panel hereby enters 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, James W. Thompson, III, was admitted to the North Carolina State Bar on August 19, 1973, and was at all times referred to herein an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar, and the Rules of Professional Conduct.

3. During all or part of the relevant periods referred to herein, Defendant was engaged in the practice of law in the State of North Carolina and maintained a law office in Morehead City, Carteret County, North Carolina.

4. In January 2006, Defendant's client, M.S., drew a check for \$250,000 made payable to Defendant and another individual, J.H., as escrow agent. This check represented M.S.'s payment of earnest money towards the purchase of real property.

5. This \$250,000 check, which was not certified, was held by J.H. and not immediately deposited into any bank account.

6. On or about April 11, 2006, Defendant presented the \$250,000 check to his bank, RBC Centura, accompanied by two deposit slips -- one for the deposit of \$125,000 into his real estate trust account with RBC Centura ending in 5168 (RETA 5168) and one for the deposit of \$125,000 into RBC Centura ending in 1787 (RBC 1787), M.S.'s escrow account for which Defendant was trustee.

7. RBC Centura credited \$125,000 to RETA 5168 and \$125,000 to RBC 1787.

8. The \$250,000 check described in paragraphs 5-7 was dishonored by the issuing bank for insufficient funds and on or about April 14, 2006, RBC Centura charged back the full amount of the check (\$250,000) to RETA 5168, rather than charging such check back to RETA 5168 and RBC 1787 in equal amounts of \$125,000 as deposited.

9. As a result of the \$250,000 deduction, other clients' funds held in RETA 5168 were used to cover the deficit in RETA 5168.

10. At the time the \$250,000 check was dishonored and charged back, Defendant was not properly performing monthly and quarterly reconciliations of his trust account, and therefore did not know of the shortfall in his trust account caused by M.S.'s dishonored check until 2008.

11. In connection with his representation of G.H., a real estate developer, from 2006 through 2008, Defendant escrowed funds from lot sales for the completion of roads in the developer's subdivision.

12. G.H.'s escrowed funds were deposited into RETA 5168 and Defendant periodically made authorized disbursements on behalf of G.H.

13. In 2008, when Defendant became aware of the circumstances surrounding the \$250,000 check that was dishonored which adversely affected G.H.'s escrow funds, he immediately informed G.H. that the dishonored check had depleted all of G.H.'s escrow funds.

14. Defendant had not maintained a proper client ledger for G.H. to show the receipts and reimbursements made on G.H.'s behalf and the current balance of G.H.'s funds held in the trust account.

15. Based upon G.H. and Defendant's joint examination of their records, it was determined that Defendant should have \$117,950 in trust for G.H.

16. In a letter to G.H. dated January 21, 2009, Defendant acknowledged that he owed G.H. approximately \$117,900.

17. In late February 2010, G.H. contacted the State Bar seeking general information about the Client Security Fund.

18. Defendant had not previously notified the State Bar that the monies that were to have been held in trust for G.H. had been misapplied.

19. After G.H. contacted the State Bar, Defendant reimbursed G.H. \$117,950 from his personal funds.

20. In late 2005 and 2006, Defendant used his RBC Centura trust account ending in 5301 to accommodate and manage his daughter's income and expenses.

21. Defendant's daughter's funds in Defendant's trust account were not held in the trust account in connection with Defendant's performance of legal services.

22. In 2005, Defendant began performing legal work on the Cannonsgate development in Carteret County on behalf of developer R.A. North and was the closing attorney for hundreds of closings on undeveloped lots for that development throughout 2006.

23. Defendant was also the closing attorney for the sales of hundreds of undeveloped lots in the Summerhouse development in Onslow County from approximately December 2006 to January 2008.

24. Virtually all of the Cannonsgate and Summerhouse closings for which Defendant was the closing attorney were conducted by mail.

25. Defendant relied heavily on his nonlawyer assistants, (Staff) to handle these closings including preparing documents and writing the checks for the closings.

26. Defendant did not review the HUD-1 Settlement Statements in many of the Cannonsgate and Summerhouse closings his office handled.

27. Numerous irregularities of which Defendant was unaware occurred during these closings, to include:

- (a) In two of the Cannonsgate closings, Staff disbursed funds from the closings prior to receiving the loan proceeds from the lender resulting in a shortfall in the trust account of approximately \$190,000 causing other clients' funds to be used to cover the shortfall;

- (b) In at least fifteen closings, Staff failed to collect earnest money deposits from the buyers resulting in additional trust account shortfalls;
- (c) In the closings for the sales by Coastal Realty Group, LLC of Lots 487 and 855 in Summerhouse, according to the sales contracts, the buyers were required to deposit earnest money with the Seller in the amounts of \$27,500 and \$36,900 respectively. However, the HUD-1 Settlement Statements for the sale of these lots reflected a landscaping credit in the amount of the purported earnest money deposit in addition to containing an entry showing earnest money deposit retained by seller in that amount which Defendant would have questioned had he properly reviewed the settlement statements;
- (d) In at least one of the Summerhouse closings, including the closing for the sale by Coastal Realty Group, LLC of Lot 49, the HUD-1 Settlement Statements reflected unreasonable closing costs for which Defendant had no explanation and which he would have questioned had he properly reviewed the settlement statements; and
- (e) In several of the Summerhouse closings, including the closings for the sale by Coastal Realty Group, LLC of Lots 49, 70, 487, and 855, amounts shown on line 603 of the HUD-1 Settlement Statements as cash to seller did not accurately reflect the disbursements to the seller shown on Defendant's ledgers.

Based upon the consent of the parties and the foregoing stipulated Findings of Fact, the Hearing Panel enters the following:

Conclusions of Law

1. All parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant and the subject matter of this proceeding.
2. Defendant's conduct, as set out in the stipulated Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) as follows:
 - (a) By failing to promptly remedy the deficit in his real estate trust account caused by M.S.'s \$250,000 check being dishonored, Defendant failed to safeguard entrusted funds in violation of Rule 1.15-2(a) and as a result, entrusted funds were paid for the benefit of persons other than the beneficial owners of the property in violation of Rule 1.15-2(j);
 - (b) By failing to deliver to G.H. entrusted funds Defendant had received in escrow for G.H., Defendant failed to pay or deliver to the client entrusted property belonging to the client and to which the client was entitled in violation of Rule 1.15-2 (m);

- (c) By failing to maintain a proper client ledger for G.H. and by failing to perform monthly and quarterly reconciliations of his trust account, Defendant failed to adequately monitor and maintain his attorney trust account in violation of Rules 1.15-3(b)(5), 1.15-3(d)(1), and 1.15-3(d)(2);
- (d) By failing to inform the State Bar that the funds he was to have been holding in escrow for G.H. had been misapplied, Defendant violated Rule 1.15-2(o);
- (e) By utilizing his trust account for purposes related to providing and accommodating his daughter's personal affairs, Defendant failed to administer his general trust account in accordance with the Rules of Professional Conduct in violation of Rules 1.15-2(a) and Rules 1.15-2(b); and
- (f) By delegating the processing of real estate closings and the handling of funds for the closings in a manner and to such a degree that he was unaware that: i) disbursements were made in two closings prior to the receipt of loan proceeds; ii) earnest money deposits in numerous closings were not collected; iii) some HUD-1 Settlement Statements failed to show the earnest money deposits required by the sales contracts and instead reflected large landscaping credits in the amount of the earnest money deposits; iv) some HUD-1 Settlement Statements reflected unreasonable closing costs for which Defendant had no explanation; and (v) in some closings, HUD-1 Settlement Statements did not accurately reflect the amount of cash paid to the seller, Defendant failed to act with reasonable diligence in representing his clients' interests in violation of Rule 1.3, failed to supervise his non-lawyer assistants to the extent necessary to ensure that the nonlawyer assistants' conduct was compatible with his professional obligations in violation of Rule 5.3(b), failed to properly maintain and disburse entrusted funds in violation of Rule 1.15-2(a), and used entrusted funds for the benefit of persons other than the beneficial owners of the property in violation of Rule 1.15-2(j).

Upon the consent of the parties, the Hearing Panel also finds by clear, cogent, and convincing evidence the following:

Findings of Fact Regarding Discipline

1. The practice of law is restricted to attorneys because the advanced legal education and training received by attorneys is necessary to effectively identify applicable legal requirements and obligations, to identify legal issues, and to apply the law to each client's individual circumstance.

2. As the closing attorney for the transactions for the numerous closings referenced in this complaint, Defendant was obligated to produce an accurate HUD-1 Settlement Statement for each transaction and to review every settlement statement.

3. Defendant's failure to personally review every settlement statement created a risk of significant harm to the clients and the lenders.

4. Defendant's failure to monitor the activity in his trust account and to perform the required reconciliations created a risk of significant harm to clients' entrusted funds.

5. Defendant has no prior disciplinary record concerning his license to practice law.

6. In early February 2006, and after many months of symptoms, Defendant's wife of 40 years was diagnosed with terminal liver cancer. Defendant's daughter had been diagnosed with breast cancer several years earlier, but was in remission. Throughout the years and dates relevant to the allegations in the complaint, Defendant was substantially preoccupied and involved with attending to his wife's many surgeries, procedures, and treatments at medical facilities and cancer hospitals throughout the state, and he was frequently out of his office. Defendant's daughter's breast cancer metastasized to her brain in the summer of 2008. His wife died of her cancer on November 6, 2009, and his daughter died of her cancer on August 25, 2010.

7. Defendant has been board certified in real property residential law since 1998.

8. Defendant fully cooperated with all inquiries made regarding these trust account matters and real estate transactions.

9. When Defendant discovered shortfalls in his trust account, he promptly took measures to rectify the problems which included depositing personal funds from personal bank loans and partial liquidation of his retirement assets.

10. Defendant has expressed genuine remorse for his conduct.

11. Defendant did not engage in the conduct described in the Findings of Fact above with any dishonest or selfish motive, and there is no evidence that he committed any act or failed to commit any act, for personal gain.

12. With the exception of G.H.'s inquiry to the State Bar regarding the Client Security Fund, no client of Defendant ever contacted the State Bar to complain that their funds had been mishandled or that their closing was not conducted properly.

13. From the time these problems first arose a number of years ago, Defendant took many steps to safeguard funds in his trust account including daily notifications from the bank of trust account items that have been presented for payment and the use of software that creates daily trust account reconciliations.

14. Attorneys familiar with Thompson in his community and professionally have attested to his excellent character and reputation.

15. The Hearing Panel has carefully considered all of the different forms of discipline available to it, including admonition, reprimand, censure, suspension, and disbarment, in considering the appropriate discipline to impose in this case.

Based on the Findings of Fact and Conclusions of Law above and the additional Findings of Fact Regarding Discipline, the Hearing Panel makes the following:

Conclusions With Respect To Discipline

1. The Hearing Panel has carefully considered all of the different forms of discipline available to it. In addition, the Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(1) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors warrant suspension of Defendant's license:

- (a) Intent of Defendant to commit acts where the harm or potential harm is foreseeable;
- (b) Defendant's actions potentially had a negative impact on the public's perception of the legal profession; and
- (c) At least in one instance, Defendant's actions impaired his client's ability to achieve the goals of the representation.

2. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(2) of the Rules and Regulations of the North Carolina State Bar and concludes no factors are present in this instance that would warrant disbarment.

3. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(3) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors are applicable in this matter:

- (a) Defendant's lack of prior disciplinary offenses;
- (b) Absence of a dishonest or selfish motive;
- (c) Defendant engaged in multiple offenses;
- (d) Effect of personal or emotional problems on the conduct in question;
- (e) Defendant's cooperative attitude toward the proceedings;
- (f) Defendant's remorse;
- (g) Good character and reputation; and
- (h) Degree of experience in the practice of law.

4. Defendant's conduct, if continued or tolerated by the Bar, poses significant potential harm to future clients.

5. The Hearing Panel has considered issuing an admonition, reprimand or censure but concludes that such discipline would not be sufficient discipline because of the gravity of the potential harm to the clients. The Panel further concludes that such discipline would fail to acknowledge the seriousness of the offenses committed by Defendant and send the wrong message to attorneys regarding the conduct expected of members of the Bar in this State.

6. This Hearing Panel has considered lesser alternatives and concludes that a stayed suspension is necessary to ensure Defendant complies with necessary conditions to avoid significant harm or the potential for significant harm to clients.

7. For these reasons, this Hearing Panel finds that an order imposing discipline short of a stayed suspension of Defendant's law license would not be appropriate.

Based upon the foregoing findings of fact and conclusions of law and the findings of fact and conclusion regarding discipline, and based upon the consent of the parties, the Hearing Panel enters the following:

Order of Discipline

1. Defendant, James W. Thompson, III, is hereby suspended from the practice of law for three years, effective 30 days from service of this order upon Defendant.

2. The three-year suspension is stayed for a period of three years as long as Defendant complies, and continues to comply during the period of the stay, with the following conditions:

(a) Defendant shall provide the State Bar with reports of all quarterly reconciliations required by Rule 1.15-3(d)(1) to ensure Defendant's compliance with the Rules of Professional Conduct as follows:

- i. The 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 quarterly reports referenced in paragraph (a)(i) 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 within 30 days of the date of the report;

- iii. All reconciliations and reports referred to herein will be completed and submitted at Defendant's sole expense;
- iv. Failure of the Defendant to timely submit any report required by this Order shall be grounds to lift the stay and activate the suspension.

(b) In addition to providing the State Bar with quarterly reconciliations for all general trust accounts, dedicated trust accounts, and fiduciary accounts, Defendant shall personally review the following:

- i. Each month, the bank statement and cancelled checks for the month covered by the bank statement;
- ii. Each quarter, the settlement statement, client ledger, and cancelled checks of three representative real estate transactions to verify that the disbursements were properly made;
- iii. Any discrepancies discovered during the monthly and quarterly reviews must be investigated, identified, and resolved within ten days; and
- iv. A report of each monthly and quarterly review, including a description of the review, the transactions sampled, and any remedial action taken, will be prepared. Defendant shall sign, date, and retain a printed copy of the report and associated documentation for a period of six years in accordance with Rule 1.15-3(g).

(c) Defendant shall certify annually on or before June 30 to the North Carolina State Bar that all general trust accounts, dedicated trust accounts, and fiduciary accounts maintained by Defendant or his law firm are administered, to the best of his knowledge, in compliance with the requirements of Rule 1.15 (including all subparts) or that he is exempt from this provision because Defendant does not maintain any trust or fiduciary accounts for North Carolina client funds;

(d) Defendant shall successfully complete twelve hours of continuing legal education in the area of trust account management within the first six months after the effective date of this order. Defendant shall provide written proof of successful completion of the CLE course to the State Bar within ten days of completing the course;

(e) Defendant shall have sole signatory authority on all general trust accounts, dedicated trust accounts, and fiduciary accounts maintained by Defendant and shall not allow the use of signature stamps, or electronic signature in lieu of his hand affixed signature;

(f) Defendant shall personally review and personally sign with his hand every HUD-1 Settlement Statement for transactions in which he is the closing attorney, be present at all closings for which he is the closing attorney, and personally verify that all receipts and disbursements are accurately entered in the HUD-1 Settlement Statement. In the event Defendant is on vacation or out of the office on legal business or on account of some unforeseen event or emergency and cannot re-schedule a closing for a time when he is present, Defendant may engage another real estate attorney to be present, attend, and supervise the closing in Defendant's absence, provided the client consents to the substitute representation and said attorney signs his/her name as the closing attorney on all closing documents;

(g) Defendant shall pay all Membership dues and Client Security Fund assessments and comply with all Continuing Legal Education requirements on a timely basis;

(h) Defendant shall keep his address of record with the North Carolina State Bar current, accept all certified mail from the North Carolina State Bar, and respond to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in the communication;

(i) Defendant shall not violate any of the Rules of Professional Conduct in effect during the period of the stay;

(j) Defendant shall not violate any laws of the State of North Carolina or of the United States during the period of the stay excluding minor traffic infractions; and

(k) Defendant shall pay all costs of this proceeding as assessed by the Secretary within thirty (30) days after service of the notice of costs on him.

3. If the stay of the suspension is lifted and the suspension is activated for any reason, the following conditions are placed upon Defendant's reinstatement to active status. With any petition Defendant files for reinstatement to active practice, Defendant must demonstrate by clear, cogent, and convincing evidence that he complied with each of the following conditions:

(a) Submitted his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days from the effective date of the order activating his suspension;

(b) Complied with all provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the N.C. State Bar Discipline & Disability Rules on a timely basis;

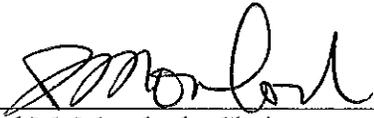
(c) Within the 12 months immediately preceding his petition for reinstatement, successfully completed four hours of continuing legal education in the area of trust account management;

- (d) Not have violated any of the Rules of Professional Conduct;
- (e) Not have violated any laws of the State of North Carolina or of the United States, excluding minor traffic infractions; and
- (f) Paid all costs of this proceeding as assessed by the Secretary within thirty (30) days of service of the notice of costs upon him.

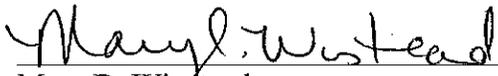
4. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout the period of the stayed suspension.

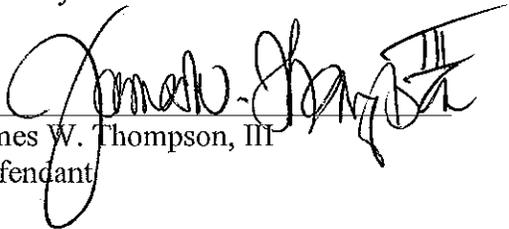
Signed by the undersigned Hearing Panel Chair with the consent of the other Hearing Panel members.

This the 20 day of February 2015.


Fred M. Morelock, Chair
Disciplinary Hearing Panel

Agreed and consented to by:


Mary D. Winstead
Attorney for Plaintiff


James W. Thompson, III
Defendant


James K. Pendergrass
Attorney for Defendant