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NORTH CAROLINA

WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
98G0862, 98G1722 & 00G0813

IN THE MATTER OF CLAWSON L. WILLIAMS, JR., ATTORNEY AT LAW	))))))	REPRIMAND

On July 25, 2001, the Grievance Committee of the North Carolina State Bar met and considered the grievances filed against you by Josephine P. Tincher and the NC State Bar.

Pursuant to section .0113(a) of the Discipline & Disability Rules of the North Carolina State Bar, the Grievance Committee conducted a preliminary hearing. After considering the information available to it, including your response to the letter of notice, the Grievance Committee found probable cause. Probable cause is defined in the rules as "reasonable cause to believe that a member of the North Carolina State Bar is guilty of misconduct justifying disciplinary action."

The rules provide that after a finding of probable cause, the Grievance Committee may determine that the filing of a complaint and a hearing before the Disciplinary Hearing Commission are not required, and the Grievance Committee may issue various levels of discipline depending upon the misconduct, the actual or potential injury caused, and any aggravating or mitigating factors. The Grievance Committee may issue an Admonition, a Reprimand, or a Censure to the Respondent attorney.

A Reprimand is a written form of discipline more serious than an Admonition issued in cases in which an attorney has violated one or more provisions of the Rules of Professional Conduct and has caused harm or potential harm to a client, the administration of justice, the profession, or a member of the public, but the misconduct does not require a Censure.

The Grievance Committee was of the opinion that a Censure is not required in this case and issues this Reprimand to you. As chairman of the Grievance Committee of the North Carolina State Bar, it is now my duty to issue this Reprimand and I am certain that you will understand fully the spirit in which this duty is performed.

During the period 1994 - 1997, you served as closing attorney and settlement agent for numerous real estate sale transactions involving the exchange of timeshare units for lots located near Pinehurst, North Carolina. In these transactions, time-share units owned by the property buyers were traded as "deposits" on the purchase of land from various development companies. One of these transactions was between a buyer, Josephine P. Tincher, and a seller, Sandhills Marketing. On October 25, 1996, Sandhills Marketing sold two lots to Ms. Tincher. You served as settlement agent in closing the land sale transactions resulting in Ms. Tincher's ownership of the lots. A

company named D & E Marketing initially purchased the lots from Alexander Pellicio for $5,000 each. D & E Marketing then conveyed the lots to Sandhills Marketing for nominal, if any, consideration. Sandhills Marketing then immediately re-conveyed the lots to Ms. Tincher for $29,900 each. Ms. Tincher obtained a bank loan to cover the purchase price of the lots. In the Tincher transaction, Sandhills Marketing allowed Ms. Tincher to "trade-in" her two timeshare units for $5,980 each, credited against the $29,900 purchase price of the lots, plus $2,800 each paid to Ms. Tincher at closing. On the settlement statement that you prepared, the timeshare credits are reflected as a "deposit or earnest money." The $2,800 refund for each timeshare was reflected as a "refund-services rendered."

When she signed the sale contract, Ms. Tincher executed a limited power of attorney authorizing you to "purchase and acquire for [the buyer] and in [the buyer's] name that certain lot or parcel of land [identified by lot number]" and further authorizing you "to sign and execute in [the buyer's] name such notes, deeds of trust, mortgages or other documents necessary to obtain and close a loan for [the buyer] to finance the purchase of said lot." Ms. Tincher also executed a second limited power of attorney authorizing you to "sell and convey and execute and sign such documents as may be necessary to sell and convey [the buyer's] interval interest in [a designated time share unit]" and to "pay any unpaid balance of the purchase price of said interval ownership or any delinquent dues or assessments owed by [the buyer] for said interval ownership." Ms. Tincher believed that her time-share units were to be transferred by deed to Sandhills Marketing, pursuant to a limited power of attorney executed in your favor by Ms. Tincher. You never transferred Ms. Tincher's timeshare unit. Ms. Tincher has continued to be charged timeshare dues and maintenance fees. You did not tell Ms. Tincher that you had not been retained to transfer her time-share unit or otherwise inform her why you could not transfer her timeshare unit.

The Grievance Committee obtained documents from numerous closings handled by you for various development companies, including 24 closings for Seven Lakes Development Corporation and Beacon Ridge Investment Company; 40 closings for REC Marketing; and approximately 20 closings for Sandhills Marketing. Many of these transactions were similar to the Tincher transaction outlined above in that they involved powers of attorney authorizing you to act as Attorney In Fact for the buyer in signing loan documents and/or executing legal documents necessary to transfer timeshare units from the buyer to the development company.

In connection with the closing transactions, you typically received closing packages from the banks. In most cases, all loan applications and sale contracts were executed before you received the packages. Most often, the bank would forward loan documents to the buyers for execution and then would send the executed loan documents to you as part of the closing package. In some instances, you executed the loan documents pursuant to a limited power of attorney granted to you by the buyer. The limited power of attorney was obtained from the buyer and sent to you as part of the loan-closing package. The documents from transactions examined by the State Bar show that at least 32 buyers, including Ms. Tincher, executed a power of attorney in your favor. You performed legal services to facilitate numerous land sale transactions for the development companies in that you examined title, recorded deeds and disbursed money.

You contend that you only represented the sellers in these transactions. However, based on your response and a review of the documents from various transactions, the Grievance Committee determined that you undertook the representation of multiple parties to the transaction: the buyers, the sellers, and the lenders in the land sale transactions. While it is true that the sellers paid your

fees in accordance with their contracts with the buyers, the buyers nevertheless agreed to retain you, at the suggestion of the sellers, to perform their loan closings and disburse funds. In those instances where you received a power of attorney to execute loan documents to close a loan or transfer timeshares, you served as attorney in fact for buyers in addition to closing attorney and settlement agent for the transaction.

Where it is the custom for a lawyer to represent a party, but the lawyer does not intend to represent the party in a particular transaction, the lawyer must give timely notice to the party, so that the party may secure separate representation. CPR 100. It is the custom that the buyer selects the closing attorney. But it is not generally assumed that the buyer's lawyer will also represent the seller. Therefore, if the closing lawyer does not intend to prepare the deed or perform other legal services for the seller, the lawyer need not give notice to the seller. RPC 210. On the other hand, where the buyer allows the seller to select an attorney in consideration of the seller paying attorney's fees (as in this case), the lawyer must advise the buyer in a timely manner if he does not intend to represent the buyer. If the lawyer does not give such notice, the lawyer will be deemed to represent all customary parties. CPR 100.

In a common representation when the closing lawyer regularly represents a seller who is in the business of real estate development, the lawyer's financial interest in retaining the seller's business may present special problems. Rule 5.1(a) of the Rules of Professional Conduct provides that "A lawyer shall not represent a client if the representation of that client will be or is likely to be directly adverse to another client, unless (1) the lawyer reasonably believes the representation will not adversely affect the interest of the other client; and (2) each client consents after full disclosure which shall include explanation of the implications of the common representation and the advantages and risks involved." RPC 210 (adopted April 4, 1997) clarifies that, "a lawyer may reasonably believe that the common representation of multiple parties to a residential real estate closing will not be adverse to the interests of any one client if the parties have already agreed to the basic terms of the transaction and the lawyer's role is limited to rendering an opinion on title, memorializing the transaction, and disbursing the proceeds. Before reaching this conclusion, however, the lawyer must determine whether there is any obstacle to the loyal representation of both parties." Where a lawyer has a long-standing professional relationship with a seller and a financial interest in continuing to represent the seller, the lawyer must carefully and thoughtfully evaluate whether he or she will be able to act impartially in closing the transaction. The lawyer may proceed with the common representation only if the lawyer reasonably believes that his or her loyalty to the seller will not interfere with the lawyer's responsibilities to the buyer. Even then, the lawyer must make full disclosure of the advantages and risks of common representation and obtain the consent of both parties before proceeding with the representation.

If you did not intend to represent all of the parties to these real estate sale transactions, you had a responsibility to so notify the party whom you did not intend to represent. You did not advise Ms. Tincher or any other buyer that you did not intend to represent them in the transaction. In most, if not all, of the transactions, the buyers were not present for closing. Many of the buyers lived outside of North Carolina and were not present for the closings. You knew that the seller had arranged for payment of your fee and had selected you as the closing attorney, at the option of the buyer to retain someone else. Rarely did the buyers retain someone else. Finally, many of the buyers signed a power of attorney appointing you as attorney in fact to execute loan documents and convey timeshare units. You must have known that the buyers considered you their attorney for

purposes of completing the closings. Further, the parties who signed powers of attorney had a reasonable expectation that you would act as their attorney in fact.

You admit that you did not communicate with the buyers, much less make disclosures to them concerning the advantages and risks of common representation with the development companies. Therefore, you did not adequately disclose to the buyers the advantages and risks of common representation, and you did not obtain the consent of both parties before proceeding with the representation. Based on these facts, the Grievance Committee concluded that you violated Rule 5.1(a) of the Rules of Professional Conduct.

The Grievance Committee also found that you served as closing attorney and escrow agent in the sale of a lot that you originally owned to Victor Harley. You sold your lot to REC Marketing Company for $7,500.00. Before the closing, REC Marketing contracted to sell the lot to Victor Harley for $24,900.00. On September 9, 1996, you prepared and recorded the deeds, examined title and disbursed funds for the transaction between yourself and REC Marketing and for the transaction between REC Marketing and Mr. Harley. You also certified title to the property to Mr. Harley and the lender. However, you did not disclose to Mr. Harley that you were the original landowner of the property and that you had a personal interest in the land sale transaction. You received payment for your interest in the lot upon your disbursement of Mr. Harley's loan. You therefore violated Rule 5.1(b) by representing Mr. Harley in a matter in which your interests were either actually or potentially adverse to your client's, without first making adequate disclosures.

Once you undertook to represent a buyer who executed a power of attorney to transfer a timeshare, you had an obligation to diligently complete the legal work necessary to carry out the representation or to communicate with your client concerning why you could not do so. To the extent that you were not retained by the sellers to complete the transfers or were not qualified or licensed to handle those transfers in other states, you nevertheless had an obligation to check the status of the timeshare transfers and to communicate with your clients, the buyers, as to what steps ought to be taken to legally transfer their timeshare units. The Grievance Committee determined that, at least with respect to Ms. Tincher, you failed to ensure that the timeshares were transferred, as contemplated by the parties' contract, in violation of Rule 6(b)(3) of the Rules of Professional Conduct ("a lawyer shall act with reasonable diligence and promptness in representing the client.") and that you failed to keep the clients reasonably informed about the status of the matters in violation of Rule 6(b)(2).

In deciding to issue a Reprimand, the Committee considered the following aggravating and mitigating factors. In aggravation, the Committee considered that your conduct involved multiple rule violations, the vulnerability of the victims and your substantial experience in the practice of law. In mitigation, the Committee considered the fact that you have no prior discipline, you fully and freely made disclosure to the committee and demonstrated a cooperative attitude toward proceedings, and there was a delay in the disciplinary process not attributable to you.

You are hereby Reprimanded by the North Carolina State Bar due to your professional misconduct. The Grievance Committee trusts that you will heed this Reprimand, that it will be remembered by you, that it will be beneficial to you, and that you will never again allow yourself to depart from adherence to the high ethical standards of the legal profession.

In accordance with the policy adopted October 15, 1981 by the Council of the North Carolina State Bar regarding the taxing of the administrative and investigative costs to any attorney issued a Reprimand by the Grievance Committee, the costs of this action in the amount of $50.00 are hereby taxed to you.

Done and ordered, this 26th day of Sept, 2001.

Calvin E. Murphy
Chair, Grievance Committee