

STATE OF NORTH CAROLINA

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
13 DHC 16

WAKE COUNTY

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

JAMES THOMAS BROWN, JR, Attorney,

Defendant

ORDER OF DISCIPLINE

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Sharon B. Alexander, Chair, and members Fred M. Morelock and Scott A. Sutton pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). Plaintiff was represented by Jennifer A. Porter. Defendant, James Thomas Brown, Jr. ("Brown") was represented by Tommy W. Jarrett and B. Geoffrey Hulse.

Based upon the pleadings in this matter, the parties' stipulations of fact, and the evidence presented at hearing, the Hearing Panel hereby finds by clear, cogent, and convincing evidence the following:

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar ("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 (Chapter 1 of Title 27 of the North Carolina Administrative Code).

2. Defendant, James Thomas Brown, Jr. ("Brown"), was admitted to the North Carolina State Bar in 1963, and is, 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, Brown was engaged in the practice of law in the State of North Carolina and maintained a law office in Goldsboro, Wayne County, North Carolina.

4. Defendant was properly served with process and the matter came before the Hearing Panel with due notice to all parties.

5. Brown was the closing attorney for the below listed transactions:

	Buyer and/or Borrower(s)	Seller	Property	Date	Lender
1.	Henry Parker Uzzell, Joe Boyett and Rachel Boyett	H. Terry Hutchens, PA, Substitute Trustee	221-A Stanley Chapel Church Road, Dudley, NC 28333	1/22/2004	Southern Bank and Trust Company
2.	Henry Parker Uzzell, Joe Boyett and Rachel Boyett	H. Terry Hutchens, PA, Substitute Trustee	306 South Virginia Street, Goldsboro, NC	2/13/2004	Southern Bank and Trust Company
3.	Henry Parker Uzzell, Joe Boyett and Rachel Boyett	Ronald H. Davis, Substitute Trustee	307 Hemlock Street, Goldsboro, NC 27530	3/19/2004	Southern Bank and Trust Company
4.	Bayview Investments, LLC	H. Terry Hutchens, PA, Substitute Trustee	304 Moss Place, Goldsboro, NC 27534	3/26/2004	Southern Bank and Trust Company
5.	Bayview Investments, LLC	Chase Manhattan Mortgage Corp.	187 Vail Road Pikeville, NC 27863	9/16/2004	Southern Bank and Trust Company
6.	Henry Parker Uzzell, Kristina A. Uzzell	H. Terry Hutchens, PA, Substitute Trustee	3476 Salem Church Road, Goldsboro, NC 27530	5/17/2005	Southern Bank and Trust Company
7.	Henry Parker Uzzell, Kristina A. Uzzell	Brock & Scott, PLLC, Substitute Trustee	1201 East Holly Street, Goldsboro, NC 27530	7/1/2005	Southern Bank and Trust Company
8.	Bayview Investments, LLC	David R. Caudle, Substitute Trustee	105 Autumn Winds Place, Goldsboro, NC 27530	10/21/2005	Southern Bank and Trust Company
9.	Henry Parker Uzzell	David W. Neill, Substitute Trustee	211 Brentwood Drive, Dudley, NC 28333	4/26/2006	Southern Bank and Trust Company

6. The above-listed transactions were purchase transactions, through which the buyer/borrower acquired ownership of the property.

7. Brown was aware that the above transactions were purchase transactions.

8. The buyer/borrowers were aware in each of the above transactions that the transaction was a purchase transaction.

9. For the transactions identified above, Brown prepared HUD-1 Settlement Statements that falsely reflected that the transactions were refinance loans rather than purchase transactions and provided those false HUD-1 Settlement Statements to the lending institution, Southern Bank and Trust Company ("Southern Bank").

10. Brown prepared and submitted the false refinance HUD-1 Settlement Statements at the direction of Mark Webb, Vice President and City Executive of the LaGrange branch of Southern Bank.

11. Southern Bank underwrote the loans as if they were refinance loans rather than purchase loans. This resulted in Southern Bank loaning more funds than it otherwise would have in purchase transactions. In several instances, the amount loaned exceeded the purchase price of the property and the borrowers received money from the closings.

12. Brown was aware that this method of closing purchase transactions as if they were refinance transactions resulted in the borrowers receiving cash at closing.

13. Brown knowingly provided false HUD-1 Settlement Statements to Southern Bank.

14. Brown provided the false HUD-1 Settlement Statements to Southern Bank for the purpose of influencing the bank. Brown knew the purpose of providing the HUD-1 Settlement Statements to the bank was for the bank to rely on the HUD-1 Settlement Statements.

15. Brown was not aware of the scheme Mark Webb was perpetrating upon Southern Bank, as later detailed in Webb's criminal information, nor did Brown have any intent to assist Webb in his fraudulent scheme.

16. Southern Bank is, and was at the time of the transactions at issue, an institution the accounts of which were insured by the Federal Deposit Insurance Corporation (FDIC).

17. It is a violation of 18 U.S.C. § 1014 for a person to knowingly make a false statement to an institution the accounts of which are insured by the FDIC for the purpose of influencing the action of the institution, punishable by a fine up to \$1,000,000.00 and imprisonment of up to 30 years. This criminal offense is a felony offense.

18. The underlying grievance file was opened on January 5, 2012, 6 years after all but the last transaction itemized above.

Based upon the foregoing 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. At the conclusion of the State Bar's case, Defendant made a motion to dismiss. The motion to dismiss was granted in part, as to all allegations not constituting a felony and not within 6 years of the date the underlying grievance was opened.
3. Defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) as follows:
 - (a) By knowingly preparing and providing Southern Bank with false refinance HUD-1 Settlement Statements, Brown committed criminal acts (18 U.S.C. § 1014) that reflect adversely on his honesty, trustworthiness, or fitness in other respects in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit, and misrepresentation in violation of Rule 8.4(c); and
 - (b) By knowingly preparing and providing Southern Bank with a false refinance HUD-1 Settlement Statement in the 9th transaction listed above and by closing this transaction in which he knew the lender had received a false refinance HUD-1 Settlement Statement, Brown assisted others in criminal conduct (18 U.S.C. § 1014) in violation of Rule 1.2(d) and engaged in conduct involving dishonesty, fraud, deceit, and misrepresentation in violation of Rule 8.4(c).
4. The conclusion that Brown's conduct was in violation of 18 U.S.C. § 1014 is based upon the evidence, the wording of the statute, and the way the statute has been interpreted and applied by the United States Supreme Court and federal Courts of Appeal.
5. The evidence was not sufficient to find by clear, cogent and convincing evidence that Brown was aware of Webb's fraudulent scheme and intended to assist with his scheme. Accordingly, the Hearing Panel found Brown's assistance to others in the 9th transaction as referenced in paragraph 2.(a) above did not violate 8.4(a) which would have required knowing assistance or inducement or 8.4(b) which would have required knowing participation in the conspiracy for which Webb was convicted.

Based upon the foregoing Findings of Fact and Conclusions of Law, and the evidence presented at hearing, the Hearing Panel hereby finds by clear, cogent, and convincing evidence the following additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. Attorneys are held to a higher standard of conduct primarily because clients rely on their attorneys to explain and interpret legal documents to them, such as a HUD-1 Settlement Statement.
2. Clients rely on their attorneys to warn them of any liability they could incur by virtue of executing a legal document. Brown should have warned his clients, the borrowers, in the above 9 transactions of the liability they could incur by signing the false HUD-1 Settlement Statements. Instead, Brown presided at the closings where his clients signed the false HUD-1 Settlement Statements and would have advised his clients to sign these documents.
3. Banks are not normally thought of as vulnerable entities. Nevertheless, banks rely on closing attorneys to carry out closings in an ethical, lawful, and proper manner. Lenders rely on the HUD-1 Settlement Statements to accurately reflect the nature of the transaction and the receipt and disbursement of funds in these closings. In this manner, Southern Bank relied upon Brown to prepare and provide accurate HUD-1 Settlement Statements and, because of this reliance, was a vulnerable victim in these closings.
4. The loans in the 9 transactions above were not underwritten in accordance with the policies established by Southern Bank to manage risk in purchase loans, due to the misrepresentation of the loans as refinance transactions. This created the potential for financial harm to the bank.
5. The borrowers have not defaulted on the loans identified above, and the loans to Bayview Investments, LLC had been paid off at the time of the hearing in this matter.
6. The conduct of Brown at issue in this case occurred 7-9 years prior to the hearing in this case. Brown engaged in the conduct for 2 clients in 9 transactions all involving Mark Webb. There is no evidence of any other conduct by Brown involving misrepresentation in the course of his 50 year career.
7. Brown has a reputation for honesty and trustworthiness in his community.
8. Information concerning Webb's conduct and the allegations against Brown in this disciplinary matter appeared in the Goldsboro News-Argus, the local newspaper in Brown's community.
9. The allegations against Brown have been discussed among attorneys in Goldsboro.
10. Brown's conduct was a violation of 18 U.S.C. § 1014 in light of how the United States Supreme Court and the federal Courts of Appeal have interpreted the

statute, such that the elements are met even if the defendant is acting in concert with a complicit insider. However, this was a technical violation given the unique facts of this case.

11. Brown's production of the inaccurate HUD-1 Settlement Statements was motivated by a desire to satisfy his clients and the lender and not out of any dishonest or selfish motive.

12. Although Brown cooperated with Webb's request for an inaccurate HUD-1 Settlement Statement in these transactions, Brown and his assistant knew Webb was aware of the true nature of these transactions. Other information Brown provided Webb, such as the preliminary opinions of title in Southern Bank's files for 3 of the 9 transactions, accurately showed the purchase nature of the transaction. It remains, however, the attorney's overriding obligation to refuse to cooperate in any manner with conduct involving misrepresentation.

13. Brown expressed genuine regret. Brown also, however, expressed the justification that no harm was caused to Southern Bank, without the recognition that there was a significant risk of very significant harm to the bank and to Brown's clients who could have been criminally prosecuted.

14. Brown received an admonition in 1997 for failing to communicate with a client and failure to promptly return a client file.

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 enters the following:

CONCLUSIONS REGARDING 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 are present, but did not warrant suspension or disbarment in light of the totality of the evidence in this case:

- (a) Intent of Defendant to commit acts where the harm or potential harm is foreseeable;
- (b) Circumstances reflecting Defendant's lack of honesty, trustworthiness, or integrity;

- (c) Negative impact of Defendant's actions on client's or public's perception of the profession; and
- (d) Acts of misrepresentation.

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 the following factors are present, but did not warrant disbarment in light of the totality of the evidence in this case:

- (a) Acts of misrepresentation; and
- (b) Technical commission of a felony.

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 prior discipline;
- (b) Remoteness of Defendant's prior discipline;
- (c) Defendant engaged in multiple offenses;
- (d) Defendant's full and free disclosure to the Hearing Panel and cooperative attitude toward the proceedings;
- (e) Delay in the initiation of disciplinary proceedings through no fault of Defendant;
- (f) Defendant's remorse;
- (g) Defendant's good character and reputation;
- (h) Vulnerability of victim;
- (i) Defendant's experience in the practice of law; and
- (j) Other penalties or sanctions, in the form of embarrassment from the public knowledge and discussion of the misconduct in Brown's community and in the form of the humbling experience of having his peers questioned about his conduct, given the reputation for good character Brown had built and nurtured over his 50 years of practice.

4. The Hearing Panel has considered issuing an admonition or a reprimand but concludes that such discipline would not be sufficient discipline. The Panel

concludes that such discipline would fail to acknowledge the seriousness of the violations committed by Defendant and send the wrong message to attorneys regarding the conduct expected of members of the Bar in this State.

5. The Hearing Panel considered suspension or disbarment but concludes in light of the unique circumstances of this case and in light of the impact of the consequences already experienced by Defendant that neither suspension nor disbarment is necessary to protect the public or the profession in this matter for this Defendant.

6. The Hearing Panel has considered lesser alternatives and concludes that a censure is necessary to adequately protect the public. The Hearing Panel finds that an order imposing discipline short of censure would not be appropriate.

Based upon the foregoing Findings of Fact and Conclusions of Law and the Findings of Fact and Conclusions regarding discipline, the Hearing Panel enters the following:


ORDER OF DISCIPLINE

1. All alleged violations based on conduct not constituting a felony and not within 6 years of the date the underlying grievance was opened are DISMISSED.

2. Defendant, James Thomas Brown, Jr., is hereby CENSURED for the remaining violations set forth herein.

3. Administrative fees and costs are taxed to Defendant. Brown shall pay all administrative fees and costs of this proceeding as assessed by the Secretary within 30 days of receipt of the statement of fees and costs.

Signed by the Chair with the consent of the other Hearing Panel members, this the 11 day of December, 2013.



Sharon B. Alexander
Chair, Disciplinary Hearing Panel