

SUPREME COURT OF SOUTH CAROLINA

In the Matter of Ray D. Lathan

360 S.C. 326, 600 S.E.2d 902 (2004) · No. No. 25842 · Decided July 27, 2004

SUMMARY

The Supreme Court of South Carolina accepted an agreement for discipline by consent and suspended Ray D. Lathan from practicing law for six months, retroactive to his interim suspension. The disciplinary matter arose from inaccurate HUD-1 settlement statements and related failures in real estate closings, including representations concerning borrower funds and disbursements. The court also articulated standards requiring settlement statements and attorney records to accurately reflect all funds paid and disbursed, and later reinstated Lathan upon his compliance with reinstatement requirements.

CASE DETAILS

COURT	Supreme Court of South Carolina
WRITING FOR THE COURT	Chief Justice Toal; Justice Moore; Justice Waller; Justice Burnett; Justice Pleicones
JURISDICTION	South Carolina
DECIDED	July 27, 2004
DOCKET	No. 25842
DISPOSITION	other
PROCEDURAL POSTURE	Attorney disciplinary matter submitted to the Supreme Court of South Carolina on an Agreement for Discipline by Consent under Rule 21, RLDE, Rule 413, SCACR. The court accepted the agreement, imposed a six-month suspension retroactive to the interim suspension, and later granted respondent's request for reinstatement.
PRECEDENTIAL VALUE	Published South Carolina Supreme Court opinion; disciplinary decision and announced settlement-statement standards.
PARTIES	Office of Disciplinary Counsel v. Ray D. Lathan

TOPICS

real estate

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the court should accept the Agreement for Discipline by Consent and impose the agreed-upon discipline.
2. What professional-conduct violations resulted from submitting HUD-1 Settlement Statements and related closing documents that did not accurately reflect receipts, disbursements, and amounts paid outside closing.
3. What standards attorneys must follow when preparing settlement statements and maintaining records of funds exchanged in real-estate closings.

HOLDINGS

1. The court accepted the Agreement for Discipline by Consent and imposed a definite six-month suspension from the practice of law, retroactive to the respondent's interim suspension.
2. An attorney violates professional-conduct obligations by making or failing to correct material misrepresentations in HUD-1 Settlement Statements, failing to disclose information when necessary to avoid assisting a client's fraud, and failing to maintain appropriate supervision and firm procedures.
3. Costs, credits, and all amounts paid in a real-estate transaction must be accurately shown on the settlement statement, including amounts paid outside closing identified as such; the attorney must maintain records of payment methods, receipts, and disbursements, and the records must correspond to the settlement statement unless all parties, including the lender, provide written documentation authorizing otherwise.

KEY QUOTATIONS

“In an attempt to eliminate this and other deceptive practices, we emphasize that costs and credits in connection with a real estate transaction must be shown on the settlement statement and that the settlement statement must reflect all amounts paid, by whom paid, and to whom paid.” (at 338-39)

“Failure to comply with these standards may subject attorneys to disciplinary action.” (at 339)

FACTUAL BACKGROUND

Lathan was a South Carolina lawyer and partner in a firm primarily handling real-estate closings. In multiple transactions involving the Cromer Company and Stegall entities, HUD-1 Settlement Statements submitted to lenders reported borrower cash that was not received by the firm, failed to identify amounts paid outside closing, and did not correspond to the firm's actual trust-account receipts and disbursements. Lathan signed certifications that the statements were true and accurate, and he pleaded guilty to violating 18 U.S.C. § 1010. The disciplinary agreement stated that the misconduct enabled fraudulent schemes involving inflated mobile-home and land-package transactions, although the Office of Disciplinary Counsel did not allege that Lathan knew of the principals' criminal activities or personally received a special financial benefit.

PROCEDURAL HISTORY

Lathan pleaded guilty in the United States District Court for the District of South Carolina to violating 18 U.S.C. § 1010 based on false HUD-1 certifications and received a \$5,000 fine. The Office of Disciplinary Counsel and Lathan entered into an Agreement for Discipline by Consent. The South Carolina Supreme Court accepted the agreement and suspended Lathan for six months retroactive to December 4, 2003; on July 27, 2004, it granted his reinstatement request after he filed the required affidavit.

DISPOSITION

other

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