

SUPREME COURT OF SOUTH CAROLINA

In re Foster

356 S.C. 129 (2003) · Decided October 13, 2003

SUMMARY

The South Carolina Supreme Court accepted an Agreement for Discipline by Consent and publicly reprimanded an attorney who permitted a non-lawyer employee to conduct and sign documents for real estate closings without supervision. The attorney also failed to properly supervise reconciliation of the firm’s real estate escrow account and admitted violations of specified Rules of Professional Conduct and Rules for Lawyer Disciplinary Enforcement.

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	October 13, 2003
DISPOSITION	other
PROCEDURAL POSTURE	Attorney disciplinary proceeding resolved by an Agreement for Discipline by Consent under Rule 21, RLDE, Rule 413, SCACR.
PRECEDENTIAL VALUE	Published disciplinary decision with limited precedential value outside attorney-discipline matters
PARTIES	Office of Disciplinary Counsel

TOPICS

real estate

PRACTICE AREAS

- legal ethics and professional responsibility
- attorney discipline
- real estate closings
- trust accounts and escrow accounts

QUESTIONS PRESENTED

1. Whether the court should accept the respondent's Agreement for Discipline by Consent after his admission of violations of the Rules of Professional Conduct and the Rules for Lawyer Disciplinary Enforcement.
2. What sanction is appropriate for the respondent's failure to supervise a nonlawyer employee, assistance in the unauthorized practice of law, inaccurate HUD-1 Settlement Statements, and inadequate supervision of the firm's real estate escrow-account reconciliation.

HOLDINGS

1. The respondent's admitted conduct violated Rules 1.1, 1.2(a), 5.3(a), 5.3(b), 5.5(b), and 8.4(a) of Rule 407, SCACR, and Rules 7(a)(1) and 7(a)(5) of Rule 413, SCACR.
2. A public reprimand was the appropriate sanction, and the court accepted the Agreement for Discipline by Consent.

KEY QUOTATIONS

"We accept the agreement and issue a public reprimand." (at 129)

"After considering these mitigating circumstances, we find a public reprimand is the appropriate sanction in this matter." (at 132)

"Accordingly, we accept the Agreement for Discipline by Consent and publicly reprimand respondent for his actions." (at 132)

FACTUAL BACKGROUND

The respondent permitted a nonlawyer employee to conduct real estate closings without his presence or supervision and tacitly allowed her to sign his name to transaction documents. HUD-1 Settlement Statements contained inaccurate and incomplete information concerning transactions and disbursements. The respondent also allowed the employee to reconcile the firm's real estate escrow account without proper maintenance or supervision for more than a year, although an independent audit confirmed that no client funds were missing or misappropriated.

PROCEDURAL HISTORY

The respondent and the Office of Disciplinary Counsel entered into an Agreement for Discipline by Consent. The respondent admitted misconduct and consented to any sanction authorized by Rule 7(b), RLDE. The Supreme Court of South Carolina accepted the agreement and imposed a public reprimand.

DISPOSITION

other

CASES CITED

- In re Lester, 353 S.C. 246, 578 S.E.2d 7 (2003)

OPINION

PER CURIAM.

PER CURIAM. In this attorney disciplinary matter, respondent and the Office of Disciplinary Counsel have entered into an Agreement for Discipline by Consent pursuant to Rule 21, RLDE, Rule 413, SCACR. In the agreement, respondent admits misconduct and consents to the imposition of any of the sanctions set forth in Rule 7(b), RLDE.

We accept the agreement and issue a public reprimand. The facts, as set forth in the agreement, are as follows. Facts Respondent permitted a non-lawyer employee to perform real estate closings in his absence and without his supervision, and he tacitly allowed her to sign his name to the applicable real estate documents in each of the transactions.

As a result of respondent's failure to supervise the non-lawyer employee, he was not aware of inaccuracies in HUD-1 Settlement Statements prepared in a number of the closings. The HUD-1 Settlement Statements in these matters did not reflect the complete transaction, nor did they accurately reflect the disbursements being made in conjunction with the transactions.

Respondent recognizes that the HUD-1 Settlement Statement is required by the Federal Truth in Lending Act and that the incorrect information provided by the non-lawyer employee was at variance with the purposes of the Act. Respondent also allowed the non-lawyer employee to be responsible for reconciliation of the real estate escrow account for respondent's law firm.

Respondent failed to properly maintain or supervise the reconciliation of the account in accordance with Rule 417, SCACR, for over a year. Respondent represents that no client funds were misappropriated as a result of the HUD-1 inaccuracies or his failure to reconcile the real estate trust account.

In fact, respondent sought an independent audit of his law firm's real estate *131escrow account which verified that no client funds were missing from the account. Law Respondent admits that by his conduct he has violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 1.1 (a lawyer shall provide competent representation to a client); Rule 1.2(a)(a lawyer shall abide by a client's decisions concerning the objectives of representation and shall consult with the client as to the means by which they are to be pursued); Rule 5.3(a)(a partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer); Rule 5.3(b)(a lawyer having direct supervisory authority over the non-lawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer); Rule 5.5(b)(a lawyer shall not assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law); and Rule 8.4(a) (it is professional misconduct for a lawyer to violate the Rules of Professional Conduct).

Respondent also admits that he has violated the following provisions of the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR: Rule 7(a)(1) (it shall be a ground for discipline for a lawyer to violate the Rules of Professional Conduct) and Rule 7(a)(5) (it shall be a ground for discipline for a lawyer to engage in conduct tending to pollute the administration of justice or to bring the courts or the legal profession into disrepute or to engage in conduct demonstrating an unfitness to practice law).

Conclusion Respondent has cooperated fully in the investigation of this matter.¹ Respondent represents that he has implemented procedures and safeguards within his law firm to prevent not only mistakes of this nature from happening again, but also to prevent future violations of any of the Rules of Professional *132Conduct, particularly as they relate to supervision of non-lawyer staff and account reconciliation, including the institution of appropriate checks and balances.

Finally, respondent's firm no longer handles real estate closings. After considering these mitigating circumstances, we find a public reprimand is the appropriate sanction in this matter. See *In re Lester*, 353 S.C. 246, 578 S.E.2d 7 (2003).

Accordingly, we accept the Agreement for Discipline by Consent and publicly reprimand respondent for his actions. PUBLIC REPRIMAND. TOAL, C.J., MOORE, WALLER, BURNETT and PLEICONES, JJ., concur.. Respondent and his partner in his law firm self-reported these violations after discovering irregularities in HUD-1 Settlement Statements in several files.