

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)

