# Washington State Bar Association



"On behalf of the lawyers of the State of Washington . . . "

# LAWYERS' FUND FOR CLIENT PROTECTION ANNUAL REPORT

October 2008 Addendum September 2009

Washington State Bar Association 1325 Fourth Avenue, Suite 600 Seattle, WA 98101-2539 (206) 727-8232 http://www.wsba.org/lawyers/groups/lawyersfund "There is established the Lawyers' Fund for Client Protection (Fund). The Fund may be used for the purpose of relieving or mitigating a pecuniary loss sustained by any client by reason of the dishonesty of, or failure to account for money or property entrusted to, any member of the WSBA in connection with the member's practice of law, or while acting as a fiduciary in a matter related to the member's practice of law. The Fund may also be used to relieve or mitigate like loss sustained by persons by reason of similar acts of an individual who was at one time a member of the WSBA but who was, at the time of the act complained of, under a court ordered suspension."

**Admission to Practice Rule 15** 

# Washington State Bar Association LAWYERS' FUND FOR CLIENT PROTECTION 2007- 2008

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**INTRODUCTION:** At the time the 2008 Annual Fund Report was written, there were a number of applications regarding former Everett attorney Barry Hammer that remained unresolved. The Board of Governors, as the Fund Trustees, determined that, because of the number and size of the Hammer applications, there would have to be some proration of payment against available funds. The Board determined to prorate all Hammer applications against 75% of the Fund balance as of the end of the fiscal year on September 30, 2008.

The final action on all Hammer applications was made by the Trustees at their November 2008 meeting. The total of approved Hammer applications to be paid out of the FY 2008 Fund balance was \$1,278,116.28. Seventy-five percent of the remaining Fund balance was \$695,409.88. This meant that, after proration, the maximum paid to any Fund applicant regarding Barry Hammer was \$40,806.73.

# HAMMER APPLICATIONS AND PAYMENTS

The total amount in approved payments to clients of Barry Hammer, after proration, is \$695,409.88. A summary of Board and Trustee actions is shown below. Complete summaries of all approved applications follow.

Approved for Payment	24
Denied; interest paid exceeded investment	11
Denied; no attorney/client relationship	4
Denied; consequential damages	2
Denied; repaid by insurance	1
Denied as fee dispute	

# BARRY A. HAMMER – WSBA # 6444 (Everett) – Resigned in Lieu of Disbarment 6/20/05

Barry Hammer was admitted to practice December 2, 1975, and practiced in Everett. On his letterhead he said that he had an LLM in taxation. He was also a licensed CPA between September 8, 1972 and July 1, 1986, when he allowed his license to lapse. Hammer's office was located next door to a retirement/assisted living community and kitty-corner from the Snohomish County courthouse. He advertised himself as a personal injury attorney as well as a tax and estate planner, and conducted a substantial tax preparation business from his law office. Hammer resigned in lieu of disbarment effective June 20, 2005.

In addition to his law practice, Hammer also owned a corporation called Able Mortgage

and Investment, Inc., which he ran out of his law office. Able was incorporated from March 26, 1987 through March 31, 2005. It was, in essence, a Ponzi scheme, whereby Hammer would induce persons to invest in Able. He gave the investors promissory notes and, in some instances, represented that they were secured by deeds of trust on real property. In some cases that was true; in some cases it was initially true, but Hammer subsequently sold the property and did not give any replacement security for the loans; and in some cases it was, simply, false. Promissory notes from Able Mortgage were all personally guaranteed by Hammer individually.

Hammer filed a Chapter 7 bankruptcy proceeding in September 2004, claiming \$13.5 million in assets, of which \$11.2 million was in the form of real estate owned by him or by Able Mortgage. He alleged over \$13 million in debts, of which \$9.5 million was owed to Able Mortgage "investors." Unfortunately, Hammer's valuation of what he listed as the most valuable real property, the Arlington Airport property, was drastically overinflated. Hammer listed the property as having a value of \$6.5 million; however, the property was assessed at only \$646,000, and ultimately sold for approximately \$2 million. There is one remaining piece of real property, the Sultan Airport property, which may have a value between one and two million dollars. It has been on the market for some time.

Over 150 creditors filed claims. The Fund worked with the bankruptcy trustee, Peter Arkison, to notify persons potentially eligible for recovery from the Fund about the Fund, and to protect WSBA's interest. In taking possession of Hammer's estate, Arkison discovered that there was approximately \$15,000 in Hammer's IOLTA account for whom no owner could be identified. With approval from the Board of Governors, the Fund successfully petitioned the Supreme Court for authority to transfer those funds to the Fund, which resulted in the Fund's receiving \$15,260.

Hammer pled guilty in federal court to one count of wire fraud on May 29, 2008. If he abides by the terms of the plea agreement, another six charges against him will be dismissed. He was sentenced on October 31 to 3 years in prison and 250 hours of community service.

Under the Fund Procedural Rules, claims to the Fund must be made within three years from the date of Hammer's disbarment. Hammer resigned in lieu of disbarment effective June 20, 2005. The deadline for filing claims by Hammer's clients was therefore June 20, 2008.

The Fund received a total of 48 claims on Barry Hammer. Five were received and acted on before it was learned that the Fund would be receiving numerous and substantial claims. After the Committee decided those five claims, the Committee deferred action on all other Hammer claims until the filing deadline had passed. Of the five claims that were previously acted on by the Committee, one was denied as an investment unrelated to an attorney/client relationship; a second was denied as consequential damages; and a third was denied because the claimant had been reimbursed by insurance. A \$75,000 claim by a client of Hammer's was approved and

paid in the amount of \$70,160.75, and a separate \$50,000 claim by her husband was approved and paid in the amount of \$46,773.84.

Many of Hammer's clients were persons for whom he prepared tax returns and also performed legal work. The claimants tended to fall into three categories:

- 1. Legal clients of Hammer's, from whom he solicited investments based on his knowledge of their financial situation—knowledge he acquired solely because of his representation of them. In several instances, the clients first went to Hammer with some legal issue, such as sale of real property or probate of an estate; Hammer thus obtained knowledge of his client's finances, and used that knowledge to his advantage. Often, these clients would then use Hammer to prepare their income taxes over a period of years.
- 2. Clients who were initially tax clients, where Hammer then segued into representing them on legal matters (estate planning, sales of real property, personal injury cases, etc.) and then solicited them to invest with him. Many of Hammer's clients were his tax clients for over 20 years; during some of that time he did legal work for them, but he may or may not have been doing legal work at the time the investments were made. From the information available to the Fund Committee, it was often impossible to tell if they were tax clients who became legal clients, or vice versa.
- 3. Clients for whom Hammer did no legal work and whose sole relationship with Hammer was that he prepared their income taxes. Hammer advertised himself as a tax attorney and did his tax work from his law offices, and he used the information gained while preparing their taxes to encourage them to invest with him.

Fund applications concerning investments made with or through a lawyer always present difficult issues. Comment 7 to Rule 10 of the ABA Model Rules for Lawyers' Funds for Client Protection has this discussion about investments:

Claims in which lawyers steal from their clients in the guise of "investments" should be paid, but transactions having nothing to do with the lawyer's license to practice are not compensable. Claims with facts somewhere between the two extremes often arise, and the issue is whether there is "enough of" a client-lawyer relationship. Funds have found a "but for" test helpful: "But for the lawyer enjoying a client-lawyer relationship with the claimant, such loss could not have occurred." Factors considered in applying this test include (1) disparity in sophistication and bargaining power between lawyer and claimant; (2) extent to which client-lawyer relationship overcame the normal prudence of claimant; (3) extent to which lawyer became privy to claimant's financial information as claimant's lawyer; (4) whether the transaction originated with lawyer; (5) reputation of lawyer as to law practice or business involvements; (6)

amount charged by lawyer for legal services as opposed to finder's fees; and (7) number, nature, and timing of prior transactions between claimant and lawyer.

The Committee looked at this and similar rules from other jurisdictions before reviewing these applications. Also, before considering the individual applications regarding Barry Hammer, the Committee made the following decisions:

- To deduct any interest received from the principal amount invested with or through Hammer, and if it appeared the applicant received interest but didn't state the amount on the application, to impute interest based on the terms of the investment.
- o To deny any application for funds paid to Hammer unconnected with any legal or tax work.
- o To consider persons who went to Hammer solely for tax preparation possibly eligible for recovery from the Fund.
- o To deduct any payments made to the applicant from the bankruptcy court.
- o To deduct any funds the applicant received through insurance.

# **Application 08-11**

# Paid \$40,806.73

Applicants state Hammer was their attorney for "over 30 years" and was "constantly" encouraging them to invest with him. Hammer prepared documents for a real estate investment group they were involved in, drafted their Revocable Living Trust in 1994, and represented them in a couple of "minor cases." When their CPA retired, Hammer offered to do their income tax returns; the applicants state that during that time Hammer "encouraged us to invest with him. We trusted him enough to proceed."

Loan #1 originated in April 1997, when they loaned Hammer \$30,000. They received yearly interest payments on that loan. On January 14, 2003, they loaned an additional \$40,000 and received a promissory note for \$70,078.09 (combining the 1997 and 2003 loans into one unsecured note). The note was payable at 9-1/2% interest, with Barry Hammer as the obligor. The note came due 1/14/05.

Loan #2 was on 7/28/03 for \$60,000. This note was also from Barry Hammer (not Able), also at 9-1/2% interest, and was due on July 28, 2009. Applicants stated that Hammer "encouraged us to invest another \$60,000 and he would make our monthly motor home payments of \$702.26." (The promissory note makes no reference to the motor home, but does call for payments of \$702.26/month). They state that the payments were made until he filed for bankruptcy, and that "instead of paying cash for our motor home he convinced us to invest the money with him so we could deduct the

interest on our income tax."

After consideration, the Trustees approved the maximum prorated payment of \$40,806.73.

Application 08-04 Application 08-05

Paid \$18,949.23 Paid \$7,551.86

Applicants, husband and wife, were first referred to Hammer when they needed an attorney for tax planning. They started out as tax clients; later Hammer prepared their wills and served as their "proxy"/attorney-in-fact when they purchased their home.

Application 08-04: This loan originated 5/16/89 for the principal amount of \$35,000 as a loan made to a third person "per arrangement made with Barry Hammer," and after additional funds were given to Hammer, the principal was \$50,000. The note was secured by a Deed of Trust on property in Arlington, and called for interest payments of \$525/month. Applicants stated that the total cash invested was \$46,011.31. They received \$28,900 in interest. They received \$3,231.50 from the bankruptcy on 1/3/06. The Trustees approved payment of \$7,551.856 after proration as discussed above.

Application 08-05: Applicant wife invested an additional \$40,826.05 from her separate funds. She received \$5,998.65 from the bankruptcy court on 1/3/06, and received no interest payments. The Trustees approved prorated payment of \$18,949.23.

# Application 08-27

Paid \$40,806.73

Applicant went to Hammer for help probating her father's estate; Hammer took the opportunity to encourage her to invest with him. He told her that he had been "flipping houses and properties since high school" and that she would never lose her money. He also told her he was "bonded to cover all the investors." Applicant wanted security for her investments; Hammer gave her Deeds of Trust on property, but had her sign reconveyances repeatedly and ignored her requests to secure via other properties. Applicant had four loans at the time of Hammer's bankruptcy filing:

Loan #1: 9/25/00, \$100,000.00, promissory note from "Barry Hammer, as nominee for undisclosed principals". This loan was secured by a Deed of Trust on property in Snohomish (same grantor as the promissory note), and came due 9/25/02. The note was at 10% interest and called for payment of \$833.33/month. Interest received: \$9,999.96/year x 4 years = \$39,999.84

Loan #2, 10/10/00, \$400,000.00, promissory note from "Barry Hammer, as nominee for undisclosed principals." The note was secured by a Deed of Trust dated 10/10/00 (same grantor as the promissory note), and came due 10/10/02. The note was at 10% interest and called for payments of \$3,333.33/month. Interest received:

 $39,999.96/year \times 3.75 years = $149,999.85.$ 

Loan #3, 4/9/01, \$150,000.00, promissory note from "Barry Hammer, as nominee for undisclosed principals". The note was secured by the same 10/10/00 Deed of Trust, and came due 4/9/03. The note was at 10% interest and called for payments of \$1,250.00/month. Interest received: \$15,000/year x 3.25 years = \$48,750.00

Loan #4, 12/10/01, \$40,000.00, "deed of trust note" names Barry Hammer as grantor in the text but has signature block for Barry Hammer as nominee for undisclosed principals. The note was secured by the same 10/10/00 Deed of Trust, and came due 10/10/03. The note was at 10% interest and called for interest only payments (no amount specified).

Applicant received interest payments on each loan up until sometime in 2004, totaling at least \$238,749.69 (\$39,999.84 + \$149,999.85 + \$48.750.00 [no amount included for Loan #4]). Her true principal (\$100,000 + \$400,000 + \$150,000 + \$40,000 = \$690,000.00) greatly exceeds the amount of the Fund cap, even after deducting interest received and the bankruptcy court distribution.

After consideration, the Trustees approved the maximum prorated payment of \$40,806.73.

# Application 08-03

# Paid \$40,806.73

Applicants were tax clients of Hammer since 1978. He recommended that they not pay off their mortgage. They refinanced their home on 8/14/03 and invested \$100,000 of the proceeds with Able Mortgage, receiving an unsecured promissory note at 9% interest. Hammer used the information gained while preparing Applicants' taxes to encourage his clients to invest with him. The Committee concluded that but for Hammer's attorney status, Applicants would not have invested with Hammer.

After consideration, the Trustees approved the maximum prorated payment of \$40,806.73.

# Application 08-06

# Paid \$40,806.73

Applicants became estate planning clients of Hammer in August 1991. While discussing their wills and estate planning needs, they discussed investing. Hammer prepared their wills and, in October 1995, set up their Revocable Living Trust. Applicants invested with Hammer several times over the years.

"Secured" loans:

Loan #1: 8/26/91, \$18,322.86 (later increased by \$3,105.55 from an IRA), to Hammer personally, at 12% per annum. This loan paid \$214.29/month interest and was replaced by a "Deed of Trust Note" from Able Mortgage on 1/5/04, at 12% per annum,

due 1/5/08. The note states that it is secured by an 8/26/91 Deed of Trust, property unidentified.

Loan #2: 8/26/91, \$15,000, to Hammer personally, at 12% per annum. This loan paid \$150/month interest and was replaced by a "Deed of Trust Note" from Able Mortgage on 1/26/04, at 12% per annum, due 1/26/08. The note states that it is secured by an 8/26/91 Deed of Trust, property unidentified.

Loan #3: 6/19/95, \$8,800 (increased by \$10,198.68 on 1/21/04), and may have been payable at 9% per annum. This loan was replaced by a "Deed of Trust Note" from Able Mortgage on 1/21/04, at 12% per annum, due 1/21/08. The note states that it is secured by an 8/26/91 Deed of Trust, property unidentified.

#### Unsecured loans:

When Applicants sold their home in December 2003, they invested the \$130,000 proceeds of sale because they were "doing well on their original investments." The investment was in the form of four unsecured promissory notes, all payable at 10%. The first note is for \$100,000, dated 1/13/04, which paid \$833.33/month through August 2004. The remaining \$30,000 was in the form of three separate promissory notes, all dated 3/11/04.

After consideration, the Trustees approved the maximum prorated payment of \$40,806.73.

#### **Application 05-74**

#### Paid \$7,218.36

Applicants had employed Hammer since 1987 for tax preparation, legal advice, and investment advice. In 1993 they consulted with him regarding opening a small business. They paid him \$1,500 to set up a corporation, which he did. On Hammer's advice they refinanced their home to use the equity as start-up capital; however, they decided not to open the business, and Hammer recommended that they invest with him instead. Hammer continued to provide legal representation on estate planning and other matters as late as 2004. There were two main transactions.

Loan #1: 9/17/93, \$10,000 at 8%, unsecured promissory note from Able Mortgage. They were also given a receipt from a receipt book. The note was due 3/17/94.

Loan #2: 11/27/02, \$20,000. Applicants refinanced their home again, and invested some of the proceeds with Hammer to pay for their son's college education. The receipt contains a notation, "Able Mortgage – Deed of Trust," but they did not receive any Deed of Trust or any other documentation for this transaction.

After consideration, the Trustees approved payment of the prorated amount of \$7,218.36.

#### Application 08-10

#### Pay \$40,806.73

Applicants, husband and wife, were tax clients of Hammer. After wife's mother died, they requested advice on how to invest the inheritance.

Loan #1: 8/28/02, \$75,000, personal promissory note, 10% interest. The note did not provide for any set monthly payments, and came due 8/28/04. Wife met with Hammer about 2002 taxes and requested the money due at that time. He wrote a check for \$10,000, "with the rest to follow 8/28/04." Hammer filed for bankruptcy in September 2004.

Loan #2: 10/4/02, \$150,000, personal promissory note, 10% interest. The note did not provide for any set monthly payments, and came due 10/4/06. Applicants hired an attorney in October 2004 to file a claim with the bankruptcy court. The proof of claim was not filed with the court, and in January 2006 Applicants hired a second attorney, who presented their claim to the malpractice carrier for the first attorney. They received \$16,885.31 from that attorney's insurance carrier, and have a commitment from the carrier that they will receive an amount equal to what they would have received from the bankruptcy final distribution had their claim been timely filed.

After consideration, the Trustees approved the maximum prorated payment of \$40,806.73.

## **Application 08-29**

#### Paid \$40,806.73

Applicants became Hammer's tax clients in 1985; they had "tax consultations" with Hammer once or twice a year for 20 years, through the spring of 2004. During their 1998 tax consultation Hammer recommended they create a Revocable Living Trust (which he then drafted). While going over their assets for purposes of drafting the Trust, Applicants told Hammer that the wife's father had recently inherited \$200,000. Hammer advised them that the state would require that the funds be used to pay for the parents' care if they had to go into a nursing home or care facility, and that if they moved the money to conventional investments the state could track it and the money would still be lost. He advised Applicants that the funds should be put into promissory notes. He told them the notes would be unsecured "but fully backed with real estate holdings, and that as a lawyer he had liability protection in Washington State that exceeded a million dollars." He also stated that the notes would be backed by his personal and business assets. He advised Applicants that, if the money was in the form of a promissory note not due for four years, the state could never go after the money because it wasn't available

Loan #1: On 7/27/98, the wife's father loaned \$180,000.00 to Able Mortgage & Investments; the promissory note listed Applicant and her brother as beneficiaries if father died. The father died later that year. Applicant's mother died in April 2001, and the note was "split" between Applicant and her brother on 12/31/01; each received new

promissory notes. Applicants state that Hammer urged them to reinvest the promissory note proceeds, instead of cashing it out, because they would have to "claim about \$40,000 in accrued interest," and that it would be better to wait until they retired and claim the interest when they were in a lower tax bracket. So they reinvested the proceeds. Applicants state that when the wife retired in March 2002 they took some of her retirement money and paid off their mortgage. When they told Hammer about this, he advised them to remortgage their house to the maximum amount available and put it into a new promissory note with him. They did not follow his advice.

Loan #2: The husband retired in November 2003. Applicants state that when they met with Hammer to discuss the tax ramifications of a house sale, Hammer convinced the husband to invest his cash retirement payout into a new promissory note. On 2/6/04, Applicant loaned \$70,000.00 to Able Mortgage & Investments and received a promissory note payable to their Revocable Living Trust.

After consideration, the Trustees approved the maximum prorated payment of \$40,806.73.

#### Application 08-02

Paid \$30,700.21

Applicants first met Hammer in late 1976 when they needed help settling the estate of the wife's parents. He also handled the sale of the parents' home and did any legal work the clients required, as well as their taxes, from 1980 to 9/04.

In the fall of 1998 the husband retired due to health reasons; Hammer advised them to cash out their investments and invest in real estate. They did not invest at that time.

Loan #1: In April 1999, Applicants met with Hammer and he again suggested investing with him. On 4/21/99 they invested \$110,000, secured by a Deed of Trust, at 12% interest, with interest payments of \$1,100/month. In April 2000 Hammer sold the property which secured the \$110,000 investment. When they were notified of the sale, and the sale closed, Applicants received, at their request, \$10,000 and reinvested the remaining \$100,000 with Hammer, at his suggestion. They received a new, unsecured promissory note dated 6/21/00, at 12% interest, which called for interest payments of \$1,000/month. At some point Applicants requested and received \$3,000 of principal, which reduced their principal to \$97,000 and their monthly interest payments to \$970/month. Interest received:  $$1,100 \times 12 = $13,200 + ($12,000 \times 4 \text{ years}) = $61,200$ .

Loan #2: 4/25/99, \$55,000, unsecured promissory note at 10-1/2% interest, with interest payments of \$481.25/month. The note came due 4/27/02. Interest received: \$5,775/year x 5.25 years = \$30,318.75

Loan #3: 5/3/99, \$15,000, unsecured promissory note at 10-1/2% interest, with interest payments of \$131.25/month. The note came due 5/3/02. Interest received:

 $1,575/year \times 5.25 years = 88,268.75.$ 

After deduction of interest received, Applicants' unaccounted-for principal totals \$67,212. They received \$10,787.60 in the bankruptcy court distribution. After consideration, the Trustees approved prorated payment of \$30,700.21.

#### Application 08-07

Paid \$40,806.73

The husband was 77 years old, and his wife was 64 with no work history. Applicants became clients of Hammer in 2001, for income taxes and for estate planning. Hammer prepared a "family living trust" for them. He advised them not to pay off their mortgage so they would keep the tax deduction. In June 2003 Hammer called Applicants into his office and offered them an investment opportunity. He told them he had been buying and selling real estate since his "high school days."

6/6/03, \$150,000 at 8% interest, personal promissory note (unsecured). The note called for payments of \$1,000/month, which were made from July 2003 through August 2004, and had a 4-year term. The \$150,000 came from the sale of the wife's childhood home that she had inherited.

After consideration, the Trustees approved the maximum prorated payment of \$40,806.73.

#### **Application 08-15**

Paid \$9,220.08

Hammer handled the probate of Applicant's mother's estate for Applicant's father. In 1996 Hammer convinced Applicant's father to lend him \$120,000; he paid back \$100,000 (without interest) but not the \$20,000. Applicant's father left those funds invested with Hammer, for the benefit of Applicant's two children; he intended it to be a college fund for his grandchildren, and the money came from his late wife's estate.

1/15/96 promissory note from Able Mortgage & Investments, \$20,000, payable to Applicant as trustee for benefit of her two children. The promissory note was unsecured at 9% and called for interest only payments (amount not specified). Applicant wanted to cash it out in September 2001, and sent Hammer a letter requesting that the fund be liquidated; instead, Hammer sent her a replacement promissory note, also unsecured, dated 1/15/01, for \$31,313.62, which included earned interest.

The Committee determined that Applicant was the trustee/beneficiary of the investment made by her father. After consideration, the Trustees approved prorated payment of \$9,220.08.

# **Application 08-18**

Paid \$3,817.43

Hammer began preparing Applicant's taxes in 1986. In 1995 Applicant transferred thenongoing auto accident litigation, which was being handled by another law firm, to

Hammer's firm, at Hammer's strong urging. The case settled, and when Applicant went to pick up the settlement check, Hammer urged her to invest with him and not with the stock market, telling her investing with him was less risky. She asked him about paying off her mortgage and he told her a "horror story" about a client who had paid extra on his mortgage and then lost his job and wound up being foreclosed on because he couldn't make his regular mortgage payments. Applicant ultimately invested \$40,000 of her settlement with Hammer.

When Hammer filed bankruptcy, he had his paralegal/office manager call Applicant and tell her that it was because Hammer had "taken his first vacation in years a few weeks back and during this time his partner came in over the weekend and cleaned out all the files, took over a million dollars in business and just left," and that this blow is what forced Hammer to file bankruptcy.

After consideration, the Trustees approved prorated payment of \$3,817.43.

#### **Application 08-28**

Paid \$24,003.07

Hammer was Applicants' tax accountant/lawyer for 26 years. Hammer represented them in two auto accident cases, prepared their wills/estate planning (including revocable living trust), and handled their parents' probates.

Loan #1: 6/24/96, \$50,000.00, unsecured promissory note from Able Mortgage & Investments. The note was at 10% interest and called for payments of \$416.67/month. Interest received: \$5,000.04/year x 8 years = \$40,000.32.

Loan #2, 8/15/03, \$44,164.67, promissory note from Able Mortgage & Investments to clients as Trustees of their Revocable Living Trust. The note states it is secured by a Deed of Trust. The note is at 9% and called for payments of \$331.24/month. Interest received: \$3,974.88/year.

After consideration, the Trustees approved prorated payment of \$24,003.07.

#### Application 07-88

Paid \$23,280.61

Applicants became tax clients in 1973. In 1996, Hammer prepared their wills, and in 2003 he represented the wife in a disability case. In 1996 Hammer also handled the wife's father's estate and sold a home as part of that estate process; when the proceeds of sale came in, Hammer recommended investing with Able Mortgage & Investments.

7/19/96, \$50,000 to Able Mortgage, at the rate of 10% interest, with interest only payments (amount not specified). The clients had a second note in August 1996 that was paid off in May 2002. In July 2004 Applicants met with Hammer to discuss the wife's pending retirement. The husband wanted to cash out the investment at that time and pay off their mortgage; Hammer talked them out of it and told them a "horror story" about another client of his.

After consideration, the Trustees approved prorated payment of \$23,280.61.

#### Application 08-47

Paid \$40,806.73

Applicants were tax clients of Hammer's since 1998. In 2001 they sold some property in Bothell and Seattle and invested the proceeds with Hammer. Hammer also prepared their wills and estate planning documents.

Loan #1: 5/18/01, \$280,000.00, unsecured personal promissory note from Hammer. The note bears an interest rate of 10% and calls for interest only payments, to be "credited and compounded monthly." The note came due 5/18/03.

Loan #2: 5/21/01, \$20,000.00, unsecured personal promissory note from Hammer. The note bears an interest rate of 10% and calls for interest only payments, to be "credited and compounded monthly." The note came due 5/21/03.

Loan #3: 8/2/01, \$100,000.00, unsecured personal promissory note from Hammer. The note bears an interest rate of 10% and calls for interest only payments, to be "credited and compounded monthly." The note came due 8/2/03.

The husband asked Hammer for withdrawals at least once but Hammer talked him out of it. In January 2002 Hammer advised Applicants to take out a loan from the husband's parents, secured by their previously paid off home, instead of withdrawing funds from their investments with Hammer.

After consideration, the Trustees approved the maximum prorated payment of \$40,806.73.

## Application 08-105

Paid \$8,204.74

Hammer was the attorney for Applicant in his capacity as Personal Representative of Applicant's late father's estate. Hammer should have been holding funds in the estate's trust account totaling \$16,128.07 as of 8/23/04. However, there was no separate estate account, and the estate funds were comingled with other funds in Hammer's trust account. The Trustees approved prorated payment of \$8,204.74.

Application 08-52 Application 08-67

Paid \$13,182.78 Paid \$18.794.08

Applicants are siblings. In the summer of 1994 Applicants' father died. The father had invested a significant amount of his retirement with Hammer. Each applicant got half of those funds. Hammer handled the probate. When Applicants sold the last remaining estate asset in 2004 they each independently decided to invest proceeds with Hammer. Each applicant questioned Hammer about the interest rate, because their father had received 12%, and Hammer told them that they would be loaning him money so he

could provide home loans to higher risk individuals at higher interest rates than the current market. He also told them that when the notes matured in April 2008 they would have the option (although not put in writing) of drawing a 1% dividend check each month if they left the money with him.

Application 08-52: Applicant was the personal representative of her father's estate, and invested \$5,000 more than she had intended because Hammer told her that \$25,000 was the minimum he would accept. 4/27/04, \$25,000.00, personal promissory note, at 9% interest. The note was unsecured and called for interest only payments. The note came due 4/27/08. After consideration, the Trustees approved prorated payment of \$13,182.78.

Application 08-67: 4/27/04, \$37,000.00, personal promissory note, at 9% interest. The note was unsecured and called for interest only payments. The note came due 4/27/08. The Committee found that at the time this loan/investment was made Hammer was representing Applicant's sister in the probate from which Applicant inherited the funds he loaned Hammer, that Hammer stood in a fiduciary capacity toward Applicant in connection with his practice of law, and that Hammer used the information gained during his representation on the probate to encourage Applicant to invest with him. After consideration, the Trustees approved prorated payment of \$18,794.08.

#### Application 08-45

#### Paid \$40,806.73

Hammer prepared business and personal tax returns for Applicant and her husband. In the spring of 2003, when they came in to pick up their tax returns, Hammer encouraged them to sell their Stanwood property and invest with him. Hammer told Applicants that their retirement would be safe with him. Since their youngest was a junior in college at the time, they decided to re-examine their investments. They listed the Stanwood property for sale, and after the listing expired a private party made an offer. Hammer said he would prepare the sale papers for free if they invested at least \$100,000 with him.

3/11/04, \$100,000.00, personal promissory note at 10% interest, calling for interest only payments, listing wife only as grantor. The note was to come due 3/11/08.

After consideration, the Trustees approved the maximum prorated payment of \$40,806.73. Applicant submitted a separate application for a second loan as husband and wife, which was denied.

#### Application 07-85

#### Paid \$40,806.73

Hammer represented Decedent during his life; he was also handling Decedent's probate. Applicant is the court-appointed personal representative and filed the claim in that capacity. On 10/1/99 Decedent sold his Lake Stevens property and Hammer "conned him" into investing the \$240,000 in Able Mortgage & Investments.

10/1/99, \$240,000 loan to Able Mortgage. The note bears interest at the rate of 12% per annum and calls for payments of \$2,400/month. The note allowed for a principal withdrawal of \$20,000 on 4/10/00 and was to come due 10/1/03; there was a July 2003 replacement promissory note for \$250,000 at 12% per annum with payments of \$2,200/month.

After consideration, the Trustees approved the maximum prorated payment of \$40,806.73.

#### Application 08-53

#### Pay \$40,806.73

Hammer was the attorney for Applicant's mother. He drafted her Revocable Living Trust in May 2002. Applicant is beneficiary of her estate.

Loan #1: 5/16/02, \$325,000.00. Applicant's mother assigned the loan to the Revocable Living Trust. The promissory note was at 8% interest.

Loan #2: 6/26/03, \$139,091.73, personal promissory note payable to mother. The note was unsecured and called for payments of \$927.28/month at 8% interest. The note came due 6/26/07.

After all calculations were made as discussed above, the Trustees approved the maximum prorated payment of \$40,806.73.

# Application 08-55

# Pay \$40,806.73

Applicants had a long time attorney-client relationship with Hammer. He prepared their tax returns and handled a number of different legal matters for them. Applicants made two loans to Hammer at his request.

Loan #1: 1/5/99, \$110,000.00, unsecured personal promissory note. The note was at 12% interest and called for interest only payments. The note was to come due 1/5/02.

Loan #2: 6/25/99, \$100,000.00, personal promissory note.

After consideration, the Trustees approved the maximum prorated payment of \$40,806.73.

# Application 08-24

# Pay \$40,806.73

Applicants were tax clients, and Hammer did general legal work for them, including a real estate sale. Applicants had "money invested with Barry for a long time and he appeared to be an honest, upright lawyer." In 2003 Applicants wanted to get their investment back, to use for a down payment, which Hammer helped them with. When

they sold their previous home, he convinced them to invest \$155,000 with him to put applicants in a better position for their retirement.

Loan #1: 2/26/97, \$53,823.33 to Able Mortgage & Investments; replaced with a new promissory note dated 10/26/99 in the amount of \$76,694.41. The note was unsecured. The note called for interest only payments at 10% per annum, and came due 10/26/02.

Loan #2: 6/17/04, \$155,000.00 to Able Mortgage & Investments. The funds for this loan came from the proceeds of sale of Applicants' Puyallup home. The note was unsecured and called for payments of \$1,000 per month. The note was at 10% per annum, and came due 6/17/08.

After consideration, the Trustees approved the maximum prorated payment of \$40,806.73.

The remaining Hammer claims were denied:

- 11 were denied because the applicants received interest payments that exceeded their principal investment.
- 4 were denied due to lack of an attorney-client relationship.
- 2 were denied as consequential damages.
- 1 was denied because it was repaid by insurance.
- 1 was denied as a fee dispute.