

4-22-82

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,)
)
 Complainant,)
)
 -vs-)
)
 JAMES J. ALTMAN, JR.,)
)
 Respondent.)

CONFIDENTIAL

Case No. 63,047

FILED

SID J. WHITE

NOV 21 1984

CLERK, SUPREME COURT

By

Chief Deputy Clerk

REPORT OF REFEREE

I. Pursuant to the undersigned being duly appointed as Referee to conduct disciplinary proceedings herein according to Article XI of the Integration Rule of the Florida Bar, hearing was held on October 18, 1984. The Pleadings, Notices, Motions, Orders, Transcripts and Exhibits all of which are forwarded to The Supreme Court of Florida with this report, constitutes the record in this case.

The following attorneys appeared as counsel for the parties:

For the Florida Bar: STEVE RUSHING

For the Respondent: (IN PRO PERSON)

II. After considering all the Pleadings and Evidence before me, pertinent portions of which are commented upon below, I find:

AS TO COUNT I

1. The Respondent stipulated with counsel for the Florida Bar that he would admit all of the factual allegations set out in the Complaint, except for a minor amendment to Paragraph 5 of Count I and further except for the allegations in Paragraphs 10, 15, 20, 24, 28 and 32 alleging that the Respondent's conduct amounted to violation of certain rules as set out in said Paragraphs. Based upon that Stipulation, I, therefore find that the Respondent became a fifty (50%) percent limited partner in California investment company, THE DYNE COMPANY LIMITED (DYNE). (Exhibit No. 2). This limited partner status was achieved through two (2) Florida companies, both

of which Respondent incorporated, is President of, and both of which his wife, TERRI ALTMAN, is Secretary-Treasurer of - GLOBAL CRITICAL RESOURCES COMPANY (GLOBAL) and TRANSWORLD METALS COMPANY (TRANSWORLD). Exhibit No. 1(T 5-6).

2. On or about October 12, 1981, Respondent, as Guardian of the assets of ISABELLA TICHINOFF (Sixth Judicial Circuit, Pasco County, File No. 80-552-I) withdrew Eight Thousand (\$8,000.00) Dollars from the guardianship account for investment purposes in DYNE of which he became fifty (50%) percent limited partner. (Exhibit No. 6). Respondent gave notes to the guardianship from GLOBAL and TRANSWORLD to establish this loan. (T-7).

3. On or about October 21, 1981, Respondent withdrew Sixty Thousand (\$60,000.00) Dollars from the Tichinoff guardianship and placed these funds in the Global account. (Exhibit No. 6(T-7)).

4. Of the above-mentioned Sixty Thousand (\$60,000.00) Dollars, Respondent forwarded Twenty-five Thousand (\$25,000.00) Dollars to J. T. MCKERR, a commodity house, for investment purposes. Another Twenty-five Thousand (\$25,000.00) Dollars was forwarded to First Financial Group (Exhibit No. 5) as a loan or investment from the guardianship to ALTMAN, via GLOBAL. (Exhibit No. 6). The remaining Ten Thousand (\$10,000.00) Dollars, plus Two Hundred (\$200.00) Dollars of Respondent's own funds, was placed in the GLOBAL account. Respondent gave a note for only Ten Thousand, Two Hundred (\$10,200.00) Dollars of the above money to the guardianship. (T-7-9).

5. On or about October 28, 1981, Respondent cashed a certificate of deposit belonging to the guardianship for the amount of Sixty-six Thousand, Four Hundred One and 66/100 (66,401.66) Dollars. With these proceeds Respondent purchased a Fifty Thousand (\$50,000.00) Dollar certificate of deposit for the guardianship, paid a Four Hundred Thirty-seven and 18/100 (\$437.18) Dollar penalty for early withdrawal, (Exhibit No. 6) , and sent a Fifteen Thousand, Nine Hundred Sixty-four and 48/100 (\$15,964.48) Dollar cashier's check to TRANSWORLD. Of this Fifteen Thousand, Nine Hundred Sixty-four and 48/100 (\$15,964.48) Dollars, Ten Thousand (\$10,000.00) Dollars went to DYNE with the remainder unaccounted for. (T-9).

6. On or about December 4, 1981, Respondent took Fifty Thousand (\$50,000.00) Dollars of a matured certificate of deposit from the TICHINOFF guardianship and wired those funds to DYNE as an investment for the guardianship. (Exhibit No. 6) (T-9).

7. On or about January 25, 1982, Respondent borrowed Twelve Thousand (\$12,000.00) Dollars from the TICHINOFF guardianship account to pay his overdue American Express account. (Exhibit No. 6). Respondent gave no note to the guardianship to establish this loan. (T-9-10).

8. Respondent has failed to repay any money to the TICHINOFF guardianship. (T-10).

AS TO COUNT II.

1. The findings in Paragraph 1 above relative to Count I are readopted herein for Count II and for all of the subsequent Counts herein.

2. On or about October 21, 1981, Respondent, as guardian of MRS. MARIA ZUERN (Sixth Judicial Circuit, Pasco County, Florida, (File No. 81-411J) withdrew Fifty Thousand (\$50,000.00) Dollars from the guardianship account and forwarded it to DYNE as an investment for the guardianship. (Exhibit No. 6) (T-10).

3. On or about December 10, 1981, Respondent as guardian of MARIA ZUERN withdrew Fifty Thousand (\$50,000.00) Dollars from a certificate of deposit and sent the money by check to DYNE as an investment for the guardianship. (Exhibit No. 6) (T-10-11).

4. Respondent has failed to repay any money to the ZUERN guardianship. (T-11).

AS TO COUNT III

1. On or about October 22, 1981, Respondent, as personal representative and attorney for the Estate of JAMES FEEHAN (File No. 80-158-CP-02), deceased, transferred Forty Thousand (\$40,000.00) Dollars from the estate to the DYNE COMPANY as an investment for the estate. (T-11),

2. On or about March 1, 1982, Respondent took Five Thousand, Five Hundred (\$5,500.00) Dollars from the FEEHAN estate and forwarded those funds, along with Two Thousand (\$2,000.00) Dollars of his own money to the BON TON TRADING COMPANY, a spin-off of THE

DYNE COMPANY. (T-11).

3. Respondent has failed to repay any money to the FEEHAN estate. (T-12).

AS TO COUNT IV

1. On or about December 24, 1981, Respondent, as curator and attorney for the Estate of FRANK BRENNAN (CP 82-147), deceased, withdrew Ten Thousand (\$10,000.00) Dollars from the estate account and forwarded those funds to GLOBAL as a loan from the estate. Respondent gave no note to the estate to document the loan. (T-12).

2. Respondent repaid Two Thousand (\$2,000.00) Dollars to the estate on or about February 18, 1982, leaving the estate Eight Thousand (\$8,000.00) Dollars short as a result of his improper withdrawals (T-12).

AS TO COUNT V

1. On or about November 12, 1981, Respondent, as guardian for LUCILLE WATROUSE (Sixth Judicial Circuit, Pasco County, Florida, File No. 80-851J) withdrew Ten Thousand (\$10,000.00) Dollars from the guardianship account and forwarded it to TRANSWORLD as a loan from the guardianship. Respondent gave no note to the guardianship to document this loan. (T-13).

2. Respondent has failed to repay any money to the WATROUSE guardianship. (T-13).

AS TO COUNT VI

1. Respondent maintained an escrow account (used for trust purposes) in conformity with Rule 11.02(4)(A) of the Integration Rule at the Flagship Bank of Pasco County (account number 060441). (T-13-14).

2. From June, 1981, through March, 1982, Respondent's account has shown clients' fund shortages ranging in value from One Hundred One (\$101.00) Dollars in June, 1981, to Thirty-one Thousand, Nine Hundred Three and 58/100 (\$31,903.58) Dollars in December, 1981. (Exhibit No. 3) (T-14).

III. As to each Count of the Complaint I make the following recommendations as to guilt or innocence:

AS TO COUNT I

I recommend that the Respondent be found guilty and specifically that he be found guilty of the following violations of his Oath as an attorney, The Integration Rules of the Florida Bar and Disciplinary Rules of the Code of Professional Responsibility, to-wit:

Disciplinary Rule 1-102(A)(3) (engaging in illegal conduct involving moral turpitude); Rule 1-102(A)(4) (engaging in illegal conduct involving dishonesty, fraud, deceit, or misrepresentation); 102(A)(6) (engaging in any other conduct which adversely reflects on his fitness to practice law; and 7-101(A)(3) (prejudicing or damaging client in the course of the professional relationship).

AS TO COUNT II

I recommend that the Respondent be found guilty and specifically that he be found guilty of the following violations of his Oath as an attorney, The Integration Rules of the Florida Bar and Disciplinary Rules of the Code of Professional Responsibility, to-wit: Disciplinary Rule 102(A)(3) (engaging in illegal conduct involving moral turpitude); 1-102(A)(4) engaging in illegal conduct involving dishonesty, fraud, deceit or misrepresentation); 1-102(A)(6) (engaging in any other conduct which adversely reflects on his fitness to practice law); 7-101(A)(3) (prejudicing or damaging client in the course of the professional relationship).

AS TO COUNT III

I recommend that the Respondent be found guilty and specifically that he be found guilty of the following violations of his Oath as an attorney, The Integration Rules of the Florida Bar and Disciplinary Rules of the Code of Professional Responsibility, to-wit: Disciplinary Rule 1-102(A)(3) (engaging in illegal conduct involving moral turpitude); 1-102(A)(4) engaging in conduct involving dishonesty,

fraud, deceit or misrepresentation); 1-102(A)(6) (engaging in any other conduct which adversely reflects on his fitness to practice law); 7-101(A)(3) (prejudicing or damaging client in the course of the professional relationship).

AS TO COUNT IV

I recommend that the Respondent be found guilty and specifically that he be found guilty of the following violations of his Oath as an attorney, The Integration Rules of the Florida Bar and Disciplinary Rules of the Code of Professional Responsibility, to-wit: Disciplinary Rule 1-102(A)(3) (engaging in illegal conduct involving moral turpitude); 1-102(A)(4) (engaging in any other conduct which adversely reflects on his fitness to practice law); 7-101(A)(3) (prejudicing or damaging client in the course of the professional relationship).

AS TO COUNT V

I recommend that the Respondent be found guilty and specifically that he be found guilty of the following violations of his Oath as an attorney, The Integration Rules of the Florida Bar and Disciplinary Rules of the Code of Professional Responsibility, to-wit: Disciplinary Rule 1-102(A)(3) (engaging in conduct involving moral turpitude); 1-102(A)(4) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation); 1-102(A)(6) (engaging in any conduct which adversely reflects on his fitness to practice law; 7-101(A)(3) (prejudicing or damaging client in the course of the professional relationship).

AS TO COUNT VI

I recommend that the Respondent be found guilty and specifically that he be found guilty of the following violations of his Oath as an attorney, The Integration Rules of the Florida Bar and Disciplinary Rules of the Code of Professional Responsibility, to-wit:

Disciplinary Rule 1-102(A)(3) (engaging in illegal conduct involving moral turpitude); 1-102(A)(4) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation); 1-102(A)(6) (engaging in any conduct which adversely reflects on his fitness to practice law); 7-101(A)(3) (prejudicing or damaging client in the course of the professional relationship); 9-102(B)(3) (failing to maintain complete records of clients' funds coming into his hands) and Integration Rule 11.02(4) (applying money entrusted to him by a client to a purpose other than the one intended).

IV. I recommend that the Respondent be disbarred from the practice of law in Florida and that the Respondent be allowed to be reinstated no sooner than ten (10) years from the date of disbarment and only after restitution to his clients in the amount of Three Hundred Nine Thousand, Nine Hundred One and 66/100 (\$309,901.66) Dollars as provided in Rule 11.1063 and only after he shall have paid costs of these proceedings in the amount of Seven Thousand, Four Hundred Four and 30/100 (\$7,404.30) Dollars.

V. After finding of guilty and prior to recommending discipline to be recommended pursuant to Rule 11.06(9)(a)(4), I considered the following personal history and prior disciplinary record of the Respondent, to-wit:

Age: Thirty-eight (38) years (dob 10/17/46 (T-58)).

Date admitted to Bar: November 1977 (T-56).

Prior disciplinary convictions and disciplinary measures imposed therein: None.

Other personal data: Respondent is employed; is on parole and fifteen (15) years probation beginning December 6, 1983, (Exhibit No. 4) having served one year in prison on two (2) concurrent two (2) year sentences on grand larceny; (Exhibit No. 4) is married to his second wife, who has a son who lives with his mother and Respondent; and he has a sixteen (16) year old son who lived with Respondent until he went to prison and who presently lives with the child's mother. (T-58).

VI. I find the following costs were reasonably incurred by the Florida Bar:

1. GRIEVANCE COMMITTEE LEVEL

Administrative costs at the Grievance Committee level, Florida Bar Integration Rule, Article XI, Rule 11.06(9)(a) \$ 150.00

Audit Expenses:

Time Expended: 144 hrs. @ \$18.50 \$2,664.00
 Travel Expenses: 1,970.43 4,634.43

Costs of Proceedings:

4/22/82 typing SI Reports \$ 10.45
 4/13/82 typing SI Reports 110.22
 5/31/83 typing SI Reports 2.00 122.67

2. REFEREE LEVEL

Administrative costs at the Referee Level, Florida Bar Integration Rule, Article XI, Rule 11.06(9)(a) \$ 150.00

Clerk of Circuit Court:

10/27/84 certified copies \$ 8.00
 10/05/84 copy of file 33.00 41.00

Auditor's Expenses - 10/18/84:

Time Expended: 24 hrs. @ \$24.60 \$590.40
 Travel Expenses: 243.92 834.32

Staff Investigator Expenses:

Time Expended: 38 hrs. @ \$13.50 513.00
 26.7 hrs. @ \$14.00 373.80
 Mileage: 348 miles @ .22 76.56
 372 miles @ .26 70.72
 Meals: 16.65 1,050.73

Witness Fee:

Jed Pittman, Clerk of Circuit Court 5.00
 Mileage: 80 miles @ .20 16.00 21.00

Branch Staff Counsel Expenses:

Steve Rushing (10/18/84)
 Mileage: 20 miles @ .26 5.20
 Parking: 4.00 9.20

Court Reporter Costs (10/18/84)

Appearance Fee: 60.00
 Transcript Costs: 240.00 390.92

TOTAL AMOUNT \$7,404.30

It is apparent that other costs have or may be incurred. I recommend that all such costs and expenses, together with the foregoing itemized costs be charged to the Respondent and that interest at the statutory rate shall accrue and be payable beginning thirty (30) days after the Judgment in this case becomes final unless a waiver is

granted by the Board of Governors.

I recommend that the Supreme Court, if necessary, retain jurisdiction of those matters necessary herein to make a final disposition of the case and direct the undersigned to take further testimony if it deems same to be necessary, relative to frozen bank accounts that the undersigned was not aware of at the time of the proceedings herein, but that have come to the attention of the undersigned by virtue of a letter dated October 31, 1984, from Bar Counsel, STEVE RUSHING, ESQUIRE, attached hereto and made a part hereof.

Dated this 19th day of November, 1984.

THOMAS A. MILLER, SR., Referee

Copies furnished to:

Mr. James Altman, Respondent
Steve Rushing, Esquire, Bar Counsel
Stanley A. Spring, Esquire, Bar Counsel, Tallahassee