

IN THE SUPREME COURT OF FLORIDA

DEC 30 1988

THE FLORIDA BAR,)
Complainant,)
v.)
H. LEE BAUMAN,)
Respondent.)

Supreme Court Case No. 63,229

The Florida Bar Case 11A81M67

AMENDED REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS: Pursuant to the undersigned being duly appointed as Referee for the Supreme Court of Florida to conduct disciplinary proceedings as provided for by article XI of the Integration Rule of The Florida Bar, review of a consent judgment for discipline was undertaken. All of the pleadings, notices, motions, orders, transcripts and exhibits are forwarded with this report and the foregoing constitutes the record of this case.

The following attorneys appeared as counsel for the parties:

On behalf of The Florida Bar: Randi Klayman Lazarus
On behalf of the Respondent: Robert L. Shevin

Respondent submitted a conditional Guilty Plea and a Consent Judgment ("Consent Judgment") which provides for the following:

- (a) Suspension from the practice of law for a period of six (6) months with the requirement that he demonstrate proof of rehabilitation pursuant to article XI, Rule 11.11 of the Integration Rule of The Florida Bar.
- (b) That Respondent take and pass the Multistate Professional Responsibility portion of The Florida Bar Examination, prior to apply for reinstatement.
- (c) The Florida Bar neither supports nor objects to Respondent's request that the suspension commence as of May 1, 1987.

(d) Taxation of costs of this disciplinary proceeding assessed against Respondent, with execution to issue with interest at a rate of 12% to accrue on all costs not paid within thirty (30) days of entry of the Supreme Court's final order, unless the time for payment is extended by the Board of Governors.

In response, Complainant filed a Petition for Approval of Conditional Stipulation For Consent Judgment which reflects the position of The Florida Bar, as approved by the Designated Reviewer of the Eleventh Judicial Circuit Grievance Committee "A", that Respondent's plea be accepted.

II. FINDINGS OF FACT: In his consent judgment, Respondent admits certain factual matters which I hereby accept and adopt as the findings of fact in this cause, to wit:

(a) That beginning on or about December 28, 1979 until January 16, 1980, the Respondent met with others on twelve (12) separate occasions, and was a party to telephonic conversations wherein he discussed the feasibility of importing controlled substances.

(b) That said meetings referred to in paragraph (a) occurred in Broward County and in Dade County, Florida.

(c) That during all of the aforementioned meetings and telephone communications at least (1) law enforcement officer, acting in an undercover capacity, was present.

(d) That the discussions involved the purchase and importation of a large quantity of cocaine and/or cannabis.

(e) That on or about January 19, 1980, Respondent completely and voluntarily renounced his participation in the above-referenced discussions to one of the undercover officers.

(f) That during the conversations referred to in paragraph (e), the deposition of one of the undercover officers reflects that Respondent stated:

I was looking for a legal fee, a retainer, you know what I mean. I plan on calling all person involved and telling them that I will no longer be involved in any illegal acts and tell them that I think it is a bad idea for them to complete any of the things that we have discussed together. I know that you must be mad at me, but please don't; or words to that effect.

(g) That subsequent to the renunciation the Respondent did contact all the individuals involved in the discussions and advised them that he never intended to go through with the transaction and persuaded the others from going forward with their intended plans and thereby prevented the commission of a criminal offense.

(h) That subsequent to the Respondent's renunciation, and communication with the other individuals referred to in Paragraph (g) above, the undercover officers were unable to procure any of the earlier mentioned controlled substances from the remaining participants.

III. RECOMMENDATION AS TO GUILT: In his Consent Judgment, Repondent admits that he engaged in unethical conduct. Based upon Respondent's admissions, I recommend that Respondent be found guilty of violating article XI, Rule 11.02(3) (a) of the Integration Rule of The Florida Bar [commission of an act contrary to honesty, justice and good morals] and Disciplinary Rule 1-102(A) (6) [conduct that adversely reflects on his fitness to practice law].

IV. MITIGATING FACTORS:: In recommending discipline, I considered the following facts offered by Respondent in mitigation:

(a) The information against BAUMAN filed in the case State of Florida v. Bauman, et. al, which information alleged those facts upon which the instant proceedings is based, was dismissed with prejudice by Judge Grossman on January 26, 1981. Judge Grossman held that BAUMAN had effectively renounced the purpose of the alleged conspiracy, had withdrawn from the alleged

conspiracy, and had endeavored to persuade his former alleged co-conspirators from proceeding further in their conspiracy -- a conspiracy that was never successfully concluded.

(b) The State of Florida thereupon appealed Judge Grossman's Order granting BAUMAN's sworn Motion to Dismiss. This appeal resulted in a reversal of Judge Grossman's Order and a remanding of the matter for a trial on the merits.

(c) Upon the trial in 1986 after remand by the Fourth District Court of Appeal, BAUMAN was acquitted of all charges by Judge Korda at a bench trial.

(d) At no time during the entire incident and leading up to BAUMAN's withdrawal from the alleged conspiracy did he ever physically possess any cannabis or cocaine, nor did any drugs change hands. Further, as a consequence of BAUMAN's renunciation and communication of his withdrawal from the alleged scheme, the conspiracy was thwarted and no drugs were transported or obtained by the remaining conspirators.

(e) At no time prior to his withdrawal from the conspiracy did BAUMAN profit financially in any manner whatsoever as a consequence of the illegal scheme. In fact, upon withdrawal from the conspiracy, BAUMAN placed his physical well-being in jeopardy and danger.

(f) By withdrawing from the alleged conspiracy and taking steps to dissuade those still involved in the conspiracy from proceeding with their scheme, BAUMAN prevented the commission of criminal acts; consequently, his conduct manifested strong evidence of self-rehabilitative intent.

(g) Since the initiation by The Florida Bar of the instant proceedings, BAUMAN has cooperated fully with The Florida Bar in its investigation of this matter.

(h) BAUMAN clearly lacks any malice toward any and all individuals whose duty it was to report, investigate and to prosecute the instant Florida Bar proceeding.

(i) Other than the single isolated instance which gave rise to the instant proceedings, BAUMAN has evidenced good moral character and personal integrity. BAUMAN has held a position of trust and confidence and has maintained an active ethical law practice and performed his obligations and responsibilities as an attorney in representing numerous clients in both civil and criminal proceedings in a competent and able manner since the isolated incident giving rise to the instant proceedings.

(j) BAUMAN evidences a strong sense of repentance for any prior misconduct that occurred six years ago, and emphatically expresses a strong and genuine intention to conduct himself in both professional and personal matters in an unimpeachable and exemplary fashion in the future.

V. RECOMMENDATION AS TO DISCIPLINARY MEASURES

TO BE APPLIED:

(a) Suspension from the practice of law for a period of six (6) months with the requirement that he demonstrate proof of rehabilitation pursuant to article XI, Rule 11.11 of the Integration Rule of The Florida Bar.

(b) That Respondent take and pass the Multistate Professional Responsibility portion of The Florida Bar Examination, prior to applying for reinstatement.

(c) That Respondent's suspension commence as of May 1, 1987.

(d) Taxation of costs of this disciplinary proceeding assessed against Respondent, with execution to issue with interest at a rate of 12% to accrue on all costs not paid within thirty (30) days of entry of the Supreme Court's final order, unless the time for payment is extended by the Board of Governors.

VI. STATEMENT OF COSTS AND RECOMMENDATION AS TO THE MANNER

IN WHICH COSTS SHOULD BE TAXED: I find that the following were reasonably incurred by The Florida Bar as costs in these proceedings and should be assessed against Respondent:

	<u>Amount</u>
Administrative Costs:	
Integration Rule 11.06(9) (a)	
Grievance Committee Level	\$ 150.00
Court Reporter	333.00
Referee Level	150.00
TOTAL	<u>\$ 633.00</u>

It is recommended that the foregoing costs be assessed against Respondent. It is further recommended that execution issue with interest at a rate of twelve percent (12%) to accrue on all costs not paid within 30 days of

entry of the Supreme Court's final order, unless time for payment is extended by the Board of Governors of The Florida Bar.

Dated this 23 day of December, 1986.

JAMES R. THOMPSON
Referee

Copies furnished to:

Randi Klayman Lazarus, Bar Counsel
Robert Shevin, Esq., Attorney for Respondent