

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

CONFIDENTIAL

CASE NO.
The Florida Bar Case
Nos. 17C80F14 and 17F82F63

The Florida Bar,
Complainant,

v

Marvin J. Powers,
Respondent.

FILED

S/D J. WHITE

APR 11 1984

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to article XI of the Intregation Rule of Florida Bar, hearings were held on January 26, 1984 and February 13, 1984.

The following attorneys appeared as counsel for the parties:
For the Florida Bar Jacquelyn Plasner Needelman
The Respondent appeared on his own behalf

II. Findings of Fact as to Each Item of Misconduct of Which the Respondent is charged: After considering all of the pleadings and evidence before me, pertinent portions of which are commented upon below, I find:

As to Count I

1. The respondent at the hearing claimed he was not practicing law during the periods charged in the complaint (Sept. 26, 1979 through March 19, 1980) and therefore his "trust account" though so labled, was not a trust account and he represented no clients and held no trust monies for clients during that period.

2. Though this was the respondent's contention he actually performed legal services for Mrs. Edith F. Barnett during this period of time (T.47-48) and handled monies that should have been considered trust funds.

3. For this reason his position is untenable and proper records should have been maintained. I find such records weren't properly maintained as can be seen from Bar Ex. 19, and the testimony of Pedro Pizzaro (T.44-46). See also what the respondent referred to as a "ledger sheet" appearing as Bar Ex. 23. The respondent testifies as to the "ledger sheets" on pages 88-90 or "ledgers" (T.78 Ex. 23).

4. Monies derived from mortgage and sale of Mrs. Barnett's property was probable put in an account of "Sand Properties" (T.57) which was a corporation owned by the respondent.

As to Count II

5. The respondent testified that he got to know the defendant in 1978 (T.50), took over her affairs in 1979 and in April of 1979 had her deed her home place to him (T.48,54), during that same month in 1979 Mrs. Barnett executed a power of attorney (Bar Ex. 7) to the respondent.

6. On August 7, 1979, Mrs. Barnett by letter (Bar Ex. 2) cancelled the power of attorney, The respondent was made aware of the letter at least by September 14, 1980 (T.68) page 50 of Depos. Bar Ex. 20, and later in March of 1980 formally cancelled it by written instrument (Bar Ex. 12) that was recorded in March of 1980.

7. In the mean time, the respondent in January of 1980 deeded the property by the use of the power of attorney he had secured in April 1979 and which had been cancelled by letter of August 7, 1979. This revocation had been brought to his attention by September 14, 1979. (Pg. 50 Bar Ex. 20)

8. On February 1, 1980, the respondent received a deposit and down payment on the sale of the property and delivered title on May 13, 1980 by deed from Sand Properties. (Bar Ex. 5)

9. In the mean time, the respondent had mortgaged the property for twenty-five thousand dollars (\$25,000.00) and retained the monies from that mortgage and subsequently sold the property by deed given May 13, 1980 from his corporation and retained the money from the net proceeds of that sale.

10. In other parts of his testimony respondent testified that Mr. Barnett had given him some four thousand dollars (\$4,000.00) earlier when he first undertook to "handle her affairs." (T.85)

11. Subsequently in his testimony, during the period of time when Mrs. Barnett was a patient in a nursing home, he testified that he worked in Texas for some period of time. (T.83)

12. I find: The respondent failed to properly account for these monies; used powers of attorney after the same had been formally revoked; failed to make payments on behalf of Mrs. Barnett (T.81-83), if he was in fact at such time, living up to an agreement that he outlined by letter dated August 8, 1979. (T.80 Bar Ex. 3)

13. The respondent has spent substantial sums of money on behalf of Mrs. Barnett, but because of his failure to keep proper records is not now able to adequately account for the disposition of the monies and by his dissembling has failed to disclose but has obfuscated the true picture of the funds under his control.

14. Though he may have undertaken the task of handling Mrs. Barnett's affairs alturistacally, but because of his dissembling and his failure to keep records, he has now effectively obscured whether or not he is truly indebted to her.

15. Mrs. Barnett at this time may not be competent to testify.

16. The respondent in the mean time has discontinued paying the bills of Mrs. Barnett. (T.81-83)

17. I find that though the Florida Bar has not proved that the respondent has defrauded Mrs. Barnett out of the sum indicated by the mortgage and sale of the property it is impossible at this time to determine what sum she is due if any at all.

18. The respondent has acted deceitfully or by misrepresentation in handling Mrs. Barnett's affairs and is guilty of a breach of Disciplinary Rule No. 1-102(A)(4).

III. Recommendation as to Whether or Not the Respondent Should be Found Guilty: 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 Intergration Rules of the Florida Bar and Disciplinary Rules of the Code of Professional Responsibility, to wit: The respondent failed to maintain deposit slips and checkbook stubs and other records clearly reflecting the source and reason for all dispersments and collections of clients funds thereby violating Disciplinary Rules 9-102(A), 9-102(B)(2) and (3), and article XI, Rule 11.02(4)(a), (b) and (c) of Intergration Rule of Florida Bar and bylaws thereunder.

As to Count II

I recommend that the respondent be found guilty and specifically that he be found guilty of the following violation of his oath as an attorney, the Intergration Rules of the Florida Bar and Disciplinary Rules of the Code of Professional Responsibility,

to wit: Did mortgage his client's Edith F. Barnett's property without her knowledge and failed to account for the proceeds of said mortgage and did, after Mrs. Barnett did revoke the power of attorney granted to the respondent, use same said power to transfer the said porperty and ultimately sell and transfer the said property without accounting to his client Edith F. Barnett. By reason of the foregoing the respondent should be found guilty of a violation of the Disciplinary Rule 1-102(A)(4), of the Code of Professional Responsibility by practicing deceit and misrepresentation on his client Edith F. Barnett.

IV. Recommendation as to Disciplinary Measures to be Applied:

I recommend that the respondent be suspended for a period of one (1) year and thereafter until he shall prove his rehabilitation as provided in Rule 11.10(4).

V. Personal History and Past Disciplinary Record: The respondent has no prior record of breaches of professional conduct.

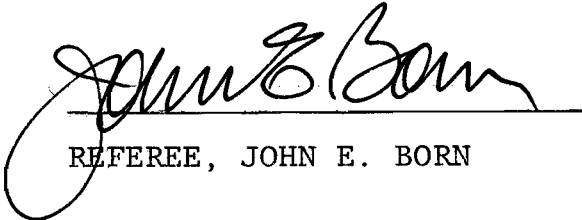
VI. Statement of Costs and Manner in Which Cost Should be Taxed: I find that the following costs were reasonable incurred by the Florida Bar.

Costs Incurred at the Grievance Committee Level as Reported	\$300.00
Administrative Cost at Referee Level Under Integration Rule 11.06(a)(5)	\$150.00
Photo Copies	\$366.00
Sheriffs Costs for Service of Process	\$ 76.00
Witness Fees	\$ 40.52
Court Reporter Costs	\$1,102.09
Staff Investigative Costs	\$ 84.70
TOTAL ITEMIZED COSTS \$2,119.31	

It is apparent that other costs have or may be incurred.

It is recommended that all such costs and expenses together with the foregoing itemized costs be charged to the respondent.

Dated this 6 day of April, 1984.



REFeree, JOHN E. BORN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Report of Referee was furnished to John T. Terry, Staff Counsel, The Florida Bar, Tallahassee, Florida, 32301-8226, Marvin J. Powers, Respondent, 6005 Bayview Drive, Fort Lauderdale, Florida, 33308, Jacquelyn Plasner Needelman, Bar Counsel, The Florida Bar, 915 Middle River Drive, Suite 602 Ft. Lauderdale, Florida 33304 via regular United States mail, and to Sid J. White, Clerk of the Supreme Court, Tallashessee, Florida, 32301, via certified mail # P-410-010-942 on this 6th day of April, 1984.