

IN THE SUPREME COURT OF FLORIDA

(Before a Referee)

FILED
SID J. WHITE
JUN 12 1984
CLERK, SUPREME COURT.
By _____
Chief Deputy Clerk

THE FLORIDA BAR,
Complainant,

v.

JOHN MONTGOMERY GREENE,
Respondent.

CASE NO. 64,091

(05A83C31)

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 Integration Rule of The Florida Bar, a hearing was held on Thursday, March 1, 1984, at 10:30 A. M. in the Marion County Courthouse, Ocala, Florida.

At said hearing The Florida Bar was represented by David G. McGunegle, Esquire and the Respondent, John Montgomery Greene, represented himself.

II. Findings of Fact: After considering all of the pleadings and evidence before me, including specifically the Bar's Exhibit No. 1, Requests for Admission and the Bar Exhibit No. 2 a report of the proceedings before the Grievance Committee, both of such exhibits being received in evidence without objection of the respondent, I find as follows:

(a) The Respondent, John Montgomery Greene, is, and at all times relevant hereto, was a member of The Florida Bar practicing law in Ocala, Marion County, Florida, That in 1980 Eileen S. Vandenberg hired respondent to handle closings on the sale of 22 adjoining lots. In preparation of the deeds the respondent made a mistake in the description which was common in all 22 lots. Mrs. Vandenberg became aware of this mistake in January of 1982 and the respondent was immediately

advised. The respondent acknowledged the mistake and promised to correct the same. After many requests and reminders the respondent had still failed to correct the deeds by November, 1982 at which time a complaint was filed with The Florida Bar. The corrections were not completed as of March 1, 1983 when probable cause was found by the Grievance Committee and were still not completed as of the date of the trial of this case nor was there any evidence that any attempt had been made to make the corrections between the time of the finding of probable cause and the trial.

There is evidence that at some point and time the complainant, Mrs. Vandenberg, refused to sign a corrective deed which was necessary in order that respondent complete the correction. However, even in light of this failure to cooperate by the complainant on that occasion it does not appear that respondent ever sufficiently explained the necessity of that deed to the complainant or her attorney, Mr. Perdue.

(b) It further appears from the evidence and in particular the admissions by the respondent that he failed to prorate the 1980 tax bill as to several of the lots which sales were closed in the year 1980. Though this appears to be a small amount of money involved, probably less than \$30.00 (only 2 or 3 lots involved, all of which were closed in late 1980 and a total tax for each lot being less than \$20.00), the respondent should have computed the same and explained to Mrs. Vandenberg how to obtain her proration if she thought it was worthwhile.

Rather than that the respondent appears to have just ignored Mrs. Vandenberg's request for the proration.

(c) It further appears from the evidence (testimony of the respondent at the Grievance Committee hearing) that respondent overcharged Mrs. Vandenberg the sum of \$300.00 relating to a fee on a mortgage foreclosure action, which respondent agreed to reimburse Mrs. Vandenberg, but as of yet has failed to do. This overbilling was an oversight by respondent and was not complained of by complainant until her complaint was filed with The Florida Bar.

(d) At the probable cause hearing before the Grievance Committee respondent agreed to correct all of the above but as of the time of the trial of this case it appears that no steps have been undertaken to either reimburse complainant for the excess fee, explain the proration of taxes or correct the deeds to the 22 parcels.

III. Recommendations:

As to the charge that respondent violated Disciplinary Rule 1-102(A)(4) for conduct involving fraud, deceit or misrepresentation the respondent should be found not guilty.

As to the charge that respondent violated Disciplinary Rule 1-102(A)(6) for other conduct adversely reflecting his fitness to practice law the respondent should be found guilty.

As to the charge that respondent violated Disciplinary Rule 3-104(D) for lack of control over nonlawyer personnel, the respondent should be found not guilty.

As to the charge that the respondent violated Disciplinary Rule 6-101(A)(3) for neglecting a legal matter entrusted to him, the respondent should be found guilty.

As to the charge that respondent violated Disciplinary

Rule 7-101(A)(2) for failing to carry out a contract of employment entered into with a client, the respondent should be found not guilty.

As to the charge that respondent violated Disciplinary Rule 7-101(A)(3) for conduct which brought prejudice or damage to his client, the respondent should be found not guilty.

As to the charge that respondent violated The Florida Bar Integration Rule, Article XI, Rule 11.02(3)(a) for conduct contrary to honesty, justice or good morals the respondent should be found not guilty.

IV. Recommendation as to Disciplinary Measures:

I recommend the respondent be publicly reprimanded and placed on one year's probation with quarterly caseload reports to be submitted to The Florida Bar. I further recommend the respondent pay to Mrs. Vandenberg, through her attorney, \$300.00 which was overcharged to her on the foreclosure actions and the \$30.00 due her from the lack of tax prorations. He is directed to make this repayment within 30 days of this recommended order. Respondent is further directed to prepare and record all necessary corrective deeds to clear the title problems within 90 days of this recommendation. Respondent's failure to repay the monies or record the corrective deeds within the timeframe set forth shall result in revocation of the recommended discipline and change it to a recommendation for a 90 day suspension with automatic reinstatement.

V. Personal History and Past Disciplinary Record: 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: 60

Date admitted to Bar: 11/25/50

Prior disciplinary convictions and disciplinary measures imposed therein: The respondent received a private reprimand for neglect on November 13, 1980, and was also publicly reprimanded in 1970 for misdemeanor income tax convictions. [235 So.2d 7 (Fla. 1970)].

Other personal data: Respondent is a sole practitioner in Ocala.


VI. Statement of costs and manner in which costs should be taxed:

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

A. Grievance Committee Level Costs	
1. Administrative Costs	\$150.00
2. Transcript Costs	
a. 2/17/83 Hearing	73.00
b. 3/31/83 Hearing	17.00
3. Bar Counsel/Branch Staff Counsel Travel Costs	
a. 2/17/83 Hearing	4.92
b. 3/31/83 Hearing	5.33
B. Referee Level Costs	
1. Administrative Costs	150.00
2. Transcript Costs	
a. 3/1/84 Hearing	53.75
3. Bar Counsel/Branch Staff Counsel Travel Costs	
a. 3/1/84 Hearing	18.00
b. 4/16/84 Hearing	31.00
C. Costs Incurred by Referee	
1. Travel Costs 3/1/84 Hearing	30.40
2. Lunch	<u>6.00</u>
TOTAL ITEMIZED COSTS	\$539.40

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, and that interest at the statutory rate shall accrue and be payable beginning 30 days after the judgment in this case becomes final unless a waiver is granted by the Board of Governors of The Florida Bar.

Dated this 25th day of April, 1984.


Referee

Copies to:

Bar Counsel

Respondent

Staff Counsel, The Florida Bar, Tallahassee, Florida 32301