

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,)
)
 Complainant,)
)
 v.)
)
 DAVID LINN,)
)
 Respondent.)
)
 _____)

CONFIDENTIAL

CASE NO. 64,121

The Florida Bar Case Nos.
15C83F03 and 15C83F6

REFEREE'S REPORT

FILED
SID J. WHITE
SEP 24 1984

CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

THIS CAUSE came on for Final Hearing July 30, 1984, before the undersigned referee. Joseph L. Ackerman, Jr., Esq. and Jacquelyn Plasner Needleman, Esq., appeared for the Complainant, The Florida Bar, and David B. Linn, Respondent, appeared in pro per.

FINDINGS OF FACT

Having considered the testimony and other evidence admitted in the Final Hearing on this cause, I find:

1. Respondent, David B. Linn, is and was, at all times hereinafter mentioned, a member of The Florida Bar subject to the jurisdiction and disciplinary rules of The Supreme Court of Florida.

2. That, in reference to Count I of the Complaint filed herein, Respondent, David B. Linn, on or about April 1, 1982, and continuing through May 4, 1982, advised one Richard Stoutenburgh that he (Linn) knew persons interested in purchasing quantities of cocaine if Stoutenburgh were able to provide it, that those persons were interested in a purchase of approximately four (4) kilograms of cocaine, that respondent and Stoutenburgh would purchase cocaine and sell it to persons known to the respondent and divide the profit from the transaction, thus conspiring with Richard Stoutenburgh to purchase and sell cocaine, a controlled substance as defined by § 893, Florida Statutes, and thus soliciting Richard Stoutenburgh to traffick in cocaine, an offense prohibited by § 893.135, Florida Statutes, in violation of § 777.04(2), Florida Statutes.

3. That by reason of the foregoing, respondent has violated Article XI, Rules 11.02(3)(a) and (b) of the Integration Rule of The Florida Bar (commission of an act contrary to honesty, justice and good morals and commission of a crime) and Disciplinary Rules 1-102(A)(1) (a lawyer shall not violate a disciplinary rule), 1-102(A)(3) (a lawyer shall not engage in any other conduct that adversely reflects on his fitness to practice law).

4. That, in reference to Count II of the Complaint filed herein, Respondent, David B. Linn, purchased Lot 1, Block 13, Hidden Valley Subdivision, Section 2, as recorded in Plat Book 25, pages 115-116, Public Records of Palm Beach County, Florida, giving as part consideration to the sellers, J. Grant and Margaret Whittle, a promissory note and a Purchase Money First Mortgage, copies of which were entered into evidence as complainant's No. 2, promising the sellers that the note and mortgage would be recorded after execution by respondent's wife, who was unable to be present at the closing of the transaction held October 30, 1981, that respondent failed to record or to deliver to the sellers their note and Purchase Money First Mortgage, the instrument being unrecorded until September 17, 1982, after which the sellers discovered that the respondent had executed, together with his wife, another promissory note and Purchase Money First Mortgage encumbering the identical realty which had been recorded January 27, 1982, as a result of which seller Whittle's mortgage became a second mortgage despite respondent's representations and despite the indication given by instruments prepared by him.

5. That, by reason of the foregoing, respondent has violated Article XI, Rule 11.02(3)(a) (a lawyer shall not commit any act contrary to honesty, justice or good morals) of the Integration Rule of The Florida Bar, and Disciplinary Rules 1-102(A)(1) (a lawyer shall not violate a disciplinary rule), 1-102(A)(3) (a lawyer shall not engage in illegal conduct involving moral turpitude), 1-102(A)(4) (a lawyer shall not engage

in conduct involving dishonesty, fraud, deceit or misrepresentation), and 1-102(A)(6) (a lawyer shall not engage in conduct that adversely reflects on his fitness to practice law) of the Code of Professional Responsibility.

RECOMMENDATIONS REGARDING GUILT OR INNOCENCE

I recommend that the respondent be found guilty of misconduct justifying disciplinary measures as the testimony and evidence indicates he has violated the provisions of Article XI, Rules 11.02(3)(a) and (b) of the Integration Rule of The Florida Bar and Disciplinary Rules 1-102(A)(1), 1-102(A)(3), 1-102(A)(5) and 1-102(A)(6).

RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

I recommend that the respondent be disbarred from the practice of law pursuant to Article XI, Rule 11.10(5) of the Integration Rule of The Florida Bar and that he be ordered to make restitution to J. Grant and Margaret Whittle in the amount of \$24,000.

PAST DISCIPLINARY MEASURES


The referee is unaware of the existence of any prior disciplinary actions in which the respondent was involved.

STATEMENT OF COSTS

I recommend the following costs should be taxed against the respondent:

<u>Administrative Costs</u>		
Referee Level	\$150.00	
Grievance Committee Level		
15C83F03	150.00	
15C83F63	<u>150.00</u>	\$450.00
<u>Investigative Costs</u>		516.07
<u>Photocopies</u>		101.25
<u>Long Distance Calls</u>		11.34
<u>Postage</u>		19.95
<u>Service of Process and Witness Fees</u>		204.80
<u>Court Reporter Costs and Transcripts</u>		1,097.50
(Grievance and Referee Levels)		
<u>Attorney's Fees awarded to The Florida Bar</u>		
<u>for fees and costs incurred as a result</u>		
<u>of respondent's failure to respond to</u>		
<u>Complainant's request for admissions</u>		<u>1,231.55</u>
TOTAL COSTS DUE THE FLORIDA BAR		\$3,662.46

Respectfully submitted,



DAVID HARPER
County Court Judge, as Referee

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Referee's Report has been forwarded to David Linn at Suite 101, 1240 South Federal Highway, Boynton Beach, Florida 33434; David Linn, 200 Oregon Lane, Boca Raton, Florida, 33431; Joseph L. Ackerman, Jr., Bar Counsel, Suite 304, 701 U.S. Highway One, North Palm Beach, Florida, 33408, and Jacquelyn Plasner Needelman, Co-Bar Counsel, The Florida Bar, Galleria Professional Building, 915 Middle River Drive, Suite 6034 Fort Lauderdale, Florida, 33304, by U.S. Mail on this 19th day of September, 1984.



DAVID HARPER