

IN THE SUPREME COURT OF FLORIDA

(Before a Referee)

**FILED**  
SID J. WHITE  
JAN 31 1985  
CLERK, SUPREME COURT  
Chief Deputy Clerk

THE FLORIDA BAR )  
 Complainant, ) CONFIDENTIAL  
 V. ) Supreme Court case No. 64,996  
 MARK H. RODMAN ) The Florida Bar Case No. 11E84M22  
 Respondent. )

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

1. The undersigned was appointed as Referee by order of the Chief Justice, dated March 20, 1984. On March 12, 1984, The Florida Bar filed the Complaint with the Supreme Court of Florida. On March 30, 1984, the Bar mailed its Request for Admissions. Since the Respondent failed to respond to the questions set forth in the Request for Admissions, the matters were deemed admitted (Rule 1.370(a), Florida Rules of Civil Procedure).

A final hearing concerning the matter was held on December 14, 1984 at the Dade County Courthouse, Miami, Florida.

The following attorneys appeared for the parties:

On behalf of The Florida Bar: Paul A. Gross, of Miami

On behalf of Respondent: No appearance

II. FINDINGS OF FACT AS TO EACH ITEM OF MISCONDUCT OF WHICH THE RESPONDENT IS CHARGED:

After considering all of the pleadings, documentary evidence and testimony, the undersigned Referee finds:

IN GENERAL

1. That the Respondent Mark H. Rodman, is, and at all times hereinafter mentioned, was a member of The Florida Bar, subject to the Jurisdiction and Disciplinary Rules of the Supreme Court of Florida. (Article V, section 15, Florida Constitution).

2. That copies of the Complaint and Request for Admissions were mailed certified mail, to the Respondent, at his official Bar address and to his last known office/residence address. (Certificate of Service on Page 5 of Complaint and Page 4 of Request for Admission).

3. That copies of the complaint and Request for Admissions apparently were also sent to the Respondent, certified mail, at David William Hotel, Suite 6-F, 700 Biltmore way, Coral Gables, Florida 33134 (Exhibit 6).

4. That notices of hearing for the final hearing on December 14, 1984, were sent to the Respondent, certified mail c/o Mrs. Simon Zajac, 19 Jane Road, Marblehead, Massachusetts (Exhibit 2) and at the David William Hotel, 700 Biltmore Way, Coral Gables, Florida 33134 (Exhibit 4).

5. That postal receipts (Exhibits 2 and 3), indicate that someone at 19 Jane Road, Marblehead, Mass., received the notice of hearing and other correspondence on behalf of the Respondent.

6. That Florida Bar Integration Rule, Article II, Section 6, states: "It should be the duty of each member of The Florida Bar immediately to advise the executive director of any change of mailing address or military status." Also, Florida Bar Integration Rule, Article XI, Rule 11.01(2), states:

mailing by registered or certified mail of papers or notices prescribed by these rules to the last mailing address of an attorney as shown by the official rules records in the office of the executive director of The Florida Bar shall be sufficient notice and service unless this court shall direct otherwise.

7. That at all times material to the investigation and prosecution of the various allegations giving rise to the complaint sub judice, The Florida Bar has diligently pursued its obligations and ethical responsibility to contact the Respondent and to provide him with notice of all proceedings, pleadings, hearings, and the like (Exhibits 1 through 6).

8. That at all times material to the hearing of this cause, both The Florida Bar and Respondent have been afforded ample opportunity to file pleadings, to personally appear before this Referee, and to present witnesses, testimony, and all other matters of evidence material and relevant to this cause.

### III. AS TO ALLEGATIONS IN THE COMPLAINT

Since the questions in the Request for Admissions were deemed admitted (Florida Rules of Civil Procedure, Rule 1.370), and considering the testimony of Bernard Walsh, it is apparent that the evidence is clear and convincing that the Respondent is guilty of all allegations in the Complaint. See The Florida Bar v. Travelstead, 435 So.2d 832 (Fla. 1983), where an attorney was disbarred, even though said attorney did not respond to complaint.

IV. THE FACTS IN THIS CASE ARE AS FOLLOWS: The detailed allegations are set forth in the Complaint and in the transcript. However, in brief form, the facts are as follows:

The Respondent was retained by Bernard Walsh, President of Central Florida Distributing Company, in connection with the sale of his inventory to E & J Gallo Winery. The Respondent received a check for \$70,029.62, which he was required to put in his trust account and then forward said amount to his client's bank. Instead of forwarding \$70,092.62, the Respondent forwarded \$58,500, leaving a shortage of \$11,529.62. The client made several attempts to locate the Respondent and has not heard from him since he discovered the shortage of funds.

V. RECOMMENDATIONS AS TO WHETHER OR NOT THE RESPONDENT SHOULD BE FOUND GUILTY:

The undersigned Referee recommends that the Respondent be found guilty of all allegations in the Complaint. Specifically, the Referee recommends that the Respondent be found guilty of violating the following Disciplinary Rules of the Code of Professional Responsibility:

DR 1-102(A)(4) a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

DR 1-102(A)(6) a lawyer shall not engage in any other conduct that adversely reflects on his fitness to practice law;

DR 9-102(B)(4) a lawyer shall promptly pay or deliver to the client as requested by a client the funds in the possession of the lawyer which the client is entitled to received.

In addition, the undersigned Referee finds the Respondent guilty of violating Florida Bar Integration Rule, Article XI, Rule 11.02(4) (money or other property entrusted to an attorney for a specific purpose is held in trust and must be applied only to that purpose).

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

Although the Referee realizes that disbarment should be reserved only for extremely serious cases, it is the undersigned's belief that stealing a client's funds warrants disbarment. In The Florida Bar v. Breed, 378 So.2d 783 (Fla. 1979), where an attorney, inter alia, misused and misappropriated clients' funds, the Supreme Court stated:

We give notice, however, to the legal profession of the state that henceforth we will not be reluctant to disbar an attorney for this type of offense even though no client is injured. Breed, at 785.

In the case at hand, the client was injured by a loss of \$11,529.62, which was misappropriated by the Respondent. The Supreme Court of Florida has disbarred attorneys because they had misappropriated the funds of their clients and the following cases are cited as a sampling of said disbarment cases:

The Florida Bar v. WOLBERT, 446 So.2d 1071 (Fla. 1984)

The Florida Bar v. NAGEL, 440 So.2d 1287 (Fla. 1983)

The Florida Bar v. QUEJADO-GREEN, 406 So.2d 1100 (Fla. 1981)

The Florida Bar v. BRIGMAN, 405 So.2d 983 (Fla. 1981)

The Florida Bar v. DRIZIN, 427 So.2d 878 (Fla. 1982)

The Florida Bar v. HARRIS, 400 So.2d 1220 (Fla. 1981)

The Florida Bar v. ROSS, 417 So.2d 985 (Fla. 1982).

In view of the above, this Referee recommends that the Respondent be disbarred. Furthermore, in addition to the other requirements for readmission, the Respondent should not be eligible for readmission until he reimburses the \$11,529.62 plus interest, at the rate of 12 % per year.

VII. PERSONAL HISTORY AND DISCIPLINARY RECORD:

The Respondent was given a Private Reprimand during May, 198~~4~~<sup>2</sup> (Exhibit 11).

The Florida Bar reports that the Respondent is 44 years of age, divorced and has one child. He was admitted to practice law in Florida during 1972 and he was licensed to practice in Minnesota during 1966.

VIII. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED:

The undersigned referee finds the following costs were reasonably incurred by The Florida Bar:

Court Reporter for Grievance  
Committee hearings on November 23, 1983.....\$ 30.15  
(Exhibit A)

Court Reporter for Referee  
Hearing on December 14, 1984.....\$140.50  
(Exhibit B)

Administrative Costs (Florida Bar Integration Rule,  
article XI, Rule 11.06(9)(6)(5):  
At Grievance Committee Level.....\$150.00  
At Referee Level.....\$150.00  
Hotel Room for one night for Bernard  
Walsh, Witness.....\$ 40.00  
(Exhibit C)

Costs for investigator.....\$ 75.32  
(As reported by complainant)

TOTAL COSTS:.....\$585.97

The undersigned Referee recommends that \$585.97 in costs and expenses be charged to the Respondent and said costs and expenses be payable within thirty days of the Supreme Court's Order in this case. If said costs and expenses are not paid within thirty days of the Court's Order, the Respondent should be responsible for paying interest at the rate of 12% per year.

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Dated this 25th day of January, 1985,  
at Miami, Florida.

Margarita EsQUIROZ  
MARGARITA ESQUIROZ, REFEREE  
301 Dade County Courthouse  
73 West Flagler Street  
Miami, Florida 33130  
(305) 375-5484

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing Report  
of Referee were mailed this 25th day of January, 1985,  
to the following persons: Paul A. Gross, Bar Counsel,  
The Florida Bar, 211 Rivergate Plaza, 444 Brickell Avenue,  
Miami, Florida 33131, Mark H. Rodman, c/o Mrs. Simon  
Zajac, 19 Jane Road, Marblehead, Massachusetts, and John T.  
Berry, Staff Counsel, The Florida Bar Center, Tallahassee,  
Florida 32301-8226.

Margarita EsQUIROZ  
MARGARITA ESQUIROZ  
Referee