

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,  
Complainant,  
v.  
FRANCIS A. CERTO,  
Respondent.

**FILED**

SID J. WHITE CASE NO. 65,274

NOV 26 1984

CLERK, SUPREME COURT.

By \_\_\_\_\_  
Chief Deputy Clerk

**FILED**

SID J. WHITE

NOV 26 1984

CLERK, SUPREME COURT.

By \_\_\_\_\_  
Chief Deputy Clerk

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS. On May 9, 1984, The Florida Bar filed its Complaint and Request for Admissions with the Supreme Court of Florida. The undersigned was appointed Referee by Order of the Chief Justice, dated May 14, 1984. A final hearing concerning this case was held on October 29, 1984 at the Monroe County Courthouse, at Plantation Key, County of Monroe, State of Florida. The Respondent, Francis A. Certo, waived the Venue and agreed to have these proceedings in Monroe County. (R. 2).

The following attorneys appeared for the parties:

For The Florida Bar -- Paul A. Gross of Miami  
For the Respondent -- Francis A. Certo, Pro Se,  
of North Miami

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, Francis A. Certo, is and at all times hereinafter mentioned, was a member of The Florida Bar subject to the jurisdiction and Disciplinary Rules of the Code of Professional Responsibility.

2. On August 20, 1984, the Respondent signed a Conditional Guilty Plea for Consent Judgment (Bar Exhibit 1), in return for the following discipline:

SUSPENSION FROM THE PRACTICE OF LAW FOR THREE YEARS, WITH PROOF OF REHABILITATION REQUIRED BEFORE BEING REINSTATED, IN ACCORDANCE WITH FLORIDA BAR INTEGRATION RULE, ARTICLE XI, RULE 11.11.

AS PART OF THE REHABILITATION, THE RESPON-  
DENT AGREES THAT HE WILL FULLY REIMBURSE  
HYMAN SENICK IN THE AMOUNT OF \$8,500 PLUS  
10% INTEREST FROM OCTOBER 10, 1980.

IF ANY OTHER MONIES SHOULD BE DUE TO  
PERSONS MENTIONED IN THE COMPLAINT,  
THE RESPONDENT AGREES TO REIMBURSE  
SAID PERSONS, WITH 10% INTEREST FROM  
THE DATE THE MONIES WERE DUE, BEFORE  
BEING REINSTATED.

FURTHERMORE, THE RESPONDENT AGREES THAT  
AS PART OF THE PROOF OF REHABILITATION,  
THE FLORIDA BAR MAY REQUIRE RESPONDENT  
TO BE EXAMINED BY A PSYCHIATRIST OR  
PSYCHOLOGIST, WHO IS APPROVED BY THE  
FLORIDA BAR; AND THAT THE RESPONDENT  
WILL HAVE THE BURDEN OF PROOF TO SHOW  
THAT HE IS NO LONGER ADDICTED OR USING  
NARCOTIC DRUGS OR ANY OTHER SUBSTANCE  
OR DRUG THAT COULD IMPAIR OR AFFECT  
HIS JUDGMENT.

3. In accordance with the new procedures in Florida Bar Integration Rule, article XI, Rule 11.13(6)(b), the Bar Counsel, with the approval of the Designated Reviewer, approved the Conditional Guilty Plea that was signed by the Respondent. (R. 3 & 4, Bar Exhibits 1 and 2).

4. That the respondent voluntarily signed the conditional guilty plea for Consent Judgment (Bar Exhibit 1), and that he understood the meaning and effect of said consent judgment. (R. 9-12).

III. THE FACTS IN THIS CASE ARE AS FOLLOWS:

In concise form, the facts are as follows:

Count I: During June 1980, Mr. Senick entered into an agreement with a builder to purchase a lot and the construction of a home.

Senick gave the builder's attorney, the Respondent, a check for \$8,500, as an advance deposit, to be held in escrow. The check was deposited in Respondent's trust account. The Respondent withdrew Senick's funds without proper authority and gave said funds to his client, the builder.

Count II: During March, 1981, Mr. & Mrs. Lolicht agreed to purchase a lot and home from Respondent's client, who was a builder. The Respondent was given checks amounting to \$10,000, to be held in escrow. The Respondent deposited the \$10,000 into his trust account. Nevertheless, the Respondent did, without proper authority, withdraw Lolicht's money for his own use to buy drugs. Respondent returned the money, plus interest - as a result of a Court Order directing him to pay it.

Count III: Respondent was sent a check for \$1,400 to hold in trust. He was required to send this money to make payments on his client's mortgage. The Respondent cashed the check and improperly used the funds. However, this money has been reimbursed. Respondent bought drugs with the money.

The Respondent was hospitalized during November 1982 due to an overdose of drugs. He was again hospitalized from November 4, 1983 to November 25, 1983 for major depression. He presently makes bi-weekly visits to a psychiatrist. See medical reports, which are marked as Exhibit 4 and Composite Exhibit 5.

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

The undersigned Referee recommends the Respondent be found guilty of all allegations in the Complaint. Specifically, it is recommended that the Respondent be found guilty of violating the following rules of the Code of Professional Responsibility and violating The Florida Bar Integration Rule, as follows: DR 1-102(A)(4), conduct involving dishonesty, fraud, deceit, or misrepresentation. DR 1-102(A)(6), conduct adversely reflecting on fitness to practice law. DR 1-102(A)(1) a lawyer shall not violate a disciplinary rule. Florida Bar Integration Rule 11.02(4); money entrusted to an attorney for a specific purpose is held in trust and must be applied only for that purpose.

V. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

Although this Referee considers the Respondent's violations to be extremely serious, he has considered the Respondent's guilty plea as being a significant first step towards rehabilitation. In addition, the Respondent has demonstrated both remorse

and an awareness of the seriousness of both his misconduct and his drug problem. Furthermore, the undersigned Referee is favorably impressed by those actions already initiated by the Respondent to free himself from the shackles of his addiction. (R. 13-15).

The Referee is painfully aware, from his experience as a judge in Monroe County, of the nature of drug addiction, and he believes that drug addiction is closer to a disease than a character defect. Also, the Referee believes it is appropriate that the Bar leave an avenue open for the Respondent to come back, if he can keep himself straight and conquer his drug problem.

The Respondent hasn't practiced law since he went into treatment, during November 1982 (R. 17).

In view of the foregoing, the Referee recommends that the Conditional Guilty Plea submitted by the Respondent be approved and the Respondent be suspended from practicing law for a period of three years, with proof of rehabilitation required as indicated in the Conditional Guilty Plea (Bar Exhibit 1), (See Paragraph II, 2, above).

#### VI. PERSONAL HISTORY AND DISCIPLINARY RECORD

The Respondent is 33 years of age, has a Bachelor's degree from the University of Miami and a Juris Doctor's degree from Nova University. He was admitted to The Florida Bar during 1977 and was a sole practitioner. On May 13, 1982, the Respondent was given a private reprimand for negligence, in not properly safeguarding the funds of a client.


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

The referee finds the following costs were reasonably incurred by The Florida Bar, as reported by Bar Counsel:

Court Reporter fees for Referee trial on October 29, 1984 . . . . .	85.00
Court Reporter fees for Grievance Committee hearings:	
March 2, 1983 . . . . .	9.75
December 21, 1982 . . . . .	139.66
December 13, 1983 . . . . .	93.80
December 7, 1982. . . . .	105.25
November 3, 1982. . . . .	84.50
Investigator Fees:	
18.2 hours x \$24. . . . .	436.80
119 miles x .25 . . . . .	29.75
Bar Counsel trip to Plantation Key October 29, 1984 . . . . .	49.90
Administrative Costs (Fla. Bar Integr. Rule 11.06(9)(5)(a))	
At Grievance Committee level. . . . .	150.00
At Referee level. . . . .	150.00
TOTAL COSTS	<u>1,334.41</u>

I recommend that \$1,334.41 in costs and expenses be charged to the Respondent and said costs be payable within thirty days of the Supreme Court's order in this case.

Dated this 20 day of November, 1984 at Monroe County, Florida.

  
 J. ALLISON DEFOOR II, REFEREE  
 Upper Keys Government Center  
 88820 Overseas Highway  
 Plantation Key, Florida 33070

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing Report of Referee were mailed this 20 day of November 1984, to Francis A. Certo, the Respondent, at 16565 N.E. 26th Avenue, North Miami Beach, Florida 33160, and to Paul A. Gross, Bar Counsel, The Florida Bar, 211 Rivergate Plaza, 444 Brickell Avenue, Miami, Florida 33131.

  
 J. Allison DeFoor II, Referee