

IN GENERAL

1. That Respondent, ROBERT F. EIMERS, 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.

2. 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 responsibilities to contact Respondent and to provide him with notice of all proceedings, pleadings, hearings and the like.

3. 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.

4. That copies of the Complaint and Request For Admissions were sent by certified mail to Respondent at his branch law office address in Key West, Florida, his residence address in Miami, Florida and his branch law office in Miami, Florida,

5. That Respondent failed to respond to the Complaint and Request For Admissions submitted by The Florida Bar, therefore the matters therein were deemed admitted in accordance with Florida Rules of Civil Procedure, Rule 1.370.

6. That the Notice of Hearing and all pleadings were sent by certified mail to Respondent's official Bar address, his branch office in Key West, Florida and his residence address in Miami, Florida.

7. Respondent failed to appear before both Grievance Committee "B" of the Eleventh Judicial Circuit on or about October 5, 1983, and the Referee at the Final Hearing on or about August 25, 1986, though Respondent was duly noticed of said hearings.

8. Nevertheless, testimony, various affidavits, judicial pleadings and other documentary evidence was entertained at said hearings.

As To Count I

(TFB Case No. 11B83M58)

In summary, Ernest F. Stuart retained Respondent to represent him in the partition and sale of a parcel of residential property located in Miami, Florida. Stuart did not attend the closing and authorized Respondent's presence on his behalf by executing a Power of Attorney. Stuart directed Respondent to deposit all of the sale proceeds due him into his savings account at the Coconut Grove Bank. Acting upon Respondent's advice, Stuart executed a second Power of Attorney authorizing Respondent to take such action. On or about February 11, 1983, the closing was concluded with Respondent receiving, on behalf of Stuart, THIRTY-NINE THOUSAND NINE HUNDRED NINETY-SIX DOLLARS AND SIXTY-SEVEN CENTS (\$ 39,996.67). On February 24, 1983, EIGHTEEN THOUSAND DOLLARS (\$ 18,000), was deposited in Stuart's savings account with TWENTY THOUSAND NINE HUNDRED NINETY-SEVEN DOLLARS NINETY-SIX CENTS (\$ 20,997.96), withheld by Respondent. Despite numerous phone calls and letters, Respondent has failed to either deposit any additional funds into Stuart's savings account or respond to inquiries made by Stuart.

As To Count II

(TFB Case No. 11B83M90)

Arnold Zimmerman, Officer of Mortgage Buyers of America was approached by Raymond MacDonald, on behalf of Effie Knowles, to sell a parcel of property located in the Bahamas. Zimmerman contacted Respondent who offered to represent Zimmerman as prospective purchaser along with Knowles as seller. Based upon Respondent's representations that he did not perceive either an ethical or legal problem with his dual representation, Zimmerman mailed TEN THOUSAND DOLLARS (\$ 10,000) to Respondent to be deposited in a trust account. Pursuant to a rescission clause in the contract for Purchase and Sale executed by the parties, Zimmerman attempted to rescind the contract and to secure a refund of the TEN THOUSAND DOLLARS (\$ 10,000) on deposit with Respondent when closing of the contract had not been effected within one hundred twenty (120) days. Respondent neither returned said TEN THOUSAND DOLLARS (\$ 10,000), contacted Zimmerman or closed the real estate transaction.

As To Count III

(TFB Case No. 11B83M99)

Henry Junco retained Respondent to represent him on a misdemeanor arrest charge in Broward County, Florida. The agreed upon fee of ONE THOUSAND DOLLARS (\$ 1,000) was to include representation by Respondent through disposition at the trial court level. By the date of arraignment, Junco had paid Respondent FIVE HUNDRED DOLLARS (\$ 500.00). Respondent told Junco, an out of state resident, that Junco need not be present at the arraignment and that Respondent would enter a written plea of not guilty for him.

Respondent never appeared at said arraignment and a bench warrant was issued in Junco's name for failing to appear. Respondent has never contacted Junco, who had to secure alternate counsel to clear up this matter.

As to Count IV

(TFB Case No. 11B84M22)

On December 22, 1982, Respondent was charged as co-conspirator in a multi-count federal indictment involving money laundering. On April 4, 1983, a bench warrant was issued for Respondent's arrest due to his failure to appear. Frances X. Santana, a neighboring attorney of Respondent, received a confidential memorandum signed by Respondent saying that Respondent was concerned about his well being and safety. Furthermore, Santana reported that clients of Respondent were requesting their files.

On April 14, 1983, The Florida Bar petitioned for Appointment of Inventory Attorney with Matthew D. Margoles appointed as such.

On April 26, 1983, The Supreme Court of Florida temporarily suspended Respondent from the practice of law.

On July 26, 1983, Respondent was convicted, in absentia, on two counts of the Federal criminal indictment, 18 U.S.C. 371; 31 U.S.C. 5316, 5322(b); Respondent was sentenced to five (5) years on each count, each sentence to run consecutively. Additionally, Respondent was fined ONE HUNDRED THOUSAND DOLLARS (\$ 100,000).

On August 30, 1983, The Florida Bar filed a Notice of Felony Conviction with The Florida Supreme Court. On September 13, 1983, The Florida Supreme Court entered an Order effecting Respondent's suspension from the practice of law due to the felony conviction.

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 Integration Rules of The Florida Bar and Disciplinary Rules of the Code of Professional Responsibility, to wit:

Article XI, Rule 11.02(4), in that money or other property entrusted to an attorney for a specific purpose, including advances for costs and expenses is held in trust and must be applied only to that purpose.

Disciplinary Rule 1-102(A) (1), in that a lawyer shall not violate a Disciplinary Rule.

Disciplinary Rule 1-102(A) (4), in that a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

Disciplinary Rule 1-102(A) (5), in that a lawyer shall not engage in conduct which is prejudicial to the administration of justice.

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

Disciplinary Rule 9-102(B) (4), in that a lawyer shall promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.

As To Count II

I recommend that Respondent be found guilty and specifically that he be found guilty of the following violations of his Oath as an attorney, the Integration Rules of The Florida Bar and Disciplinary Rules of the Code of Professional Responsibility, to wit:

Article XI, Rule 11.02(4), in that money or other property entrusted to an attorney for a specific purpose, including advances for costs and expenses is held in trust and must be applied only to that purpose.

Disciplinary Rule 1-102(A)(1), in that a lawyer shall not violate a Disciplinary Rule.

Disciplinary Rule 1-102(A)(4), in that a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

Disciplinary Rule 1-102(A)(5), in that a lawyer shall not engage in conduct which is prejudicial to the administration of justice.

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

Disciplinary Rule 9-102(B)(4), in that a lawyer shall promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.

As To Count III

I recommend that Respondent be found guilty and specifically that he be found guilty of the following violations of his Oath as an attorney, the Integration Rules

of The Florida Bar and Disciplinary Rules of the Code of Professional Responsibility, to wit:

Disciplinary Rule 1-102(A)(1), in that a lawyer shall not violate a disciplinary rule.

Disciplinary Rule 1-102(A)(4), in that a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

Disciplinary Rule 1-102(A)(5), in that a lawyer shall not engage in conduct which is prejudicial to the administration of justice.

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

Disciplinary Rule 2-110(A)(2), in that a lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including due notice to his client, allowing time for employment of other counsel, delivering to the client all papers and property of which the client is entitled, in complying with applicable laws and rules.

Disciplinary Rule 2-110(A)(3), in that a lawyer who withdraws from employment shall refund promptly any part of the fee paid in advance that has not been earned.

Disciplinary Rule 6-101(A)(3), in that a lawyer shall not neglect a legal matter entrusted to him.

Disciplinary Rule 7-101(A)(2), in that a lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services.

Disciplinary Rule 7-101(A)(3), in that a lawyer shall not intentionally prejudice or damage his client during the course of a professional relationship.

As To Count IV

I recommend that Respondent be found guilty of the following violations of his Oath as an attorney, the Integration Rules of The Florida Bar and Disciplinary Rules of the Code of Professional Responsibility, to wit:

Article XI, Rule 11.02(3)(a), in that the commission by a lawyer of any act contrary to honesty, justice, or good morals, whether act is committed in the course of his relations as an attorney or otherwise, whether committed within or outside the State of Florida, and whether or not the act is a felony or misdemeanor, constitutes a cause for discipline.

Article XI, Rule 11.02(3)(b), in that if the alleged misconduct constitutes a felony or misdemeanor, The Florida Bar may initiate disciplinary actions whether or not the accused attorney has been tried or convicted in a court of the alleged offense.

Disciplinary Rule 1-102(A)(1), in that a lawyer shall not violate a disciplinary rule.

Disciplinary Rule 1-102(A)(4), in that a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

Disciplinary Rule 1-102(A)(5), in that a lawyer shall not engage in conduct which is prejudicial to the administration of justice.

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

Disciplinary Rule 2-110(A) (2), in that a lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including due notice to his client, allowing time for employment of other counsel, delivering to the client all papers and property of which the client is entitled, in complying with applicable laws and rules.

Disciplinary Rule 2-110(A) (3), in that a lawyer who withdraws from employment shall refund promptly any part of the fee paid in advance that has not been earned.

Disciplinary Rule 6-101(A) (3), in that a lawyer shall not neglect a legal matter entrusted to him.

Disciplinary Rule 7-101(A) (2), in that a lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services.

Disciplinary Rule 7-101(A) (3), in that a lawyer shall not intentionally prejudice or damage his client during the course of a professional relationship.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

I recommend that Robert F. Eimers, the Respondent, be disbarred, as to each of the four cases under the Integration Rules of The Florida Bar, Article XI, Rule 11.10(5). Virtually every act committed by the Respondent would be grounds for disbarment. The theft of clients funds is grounds for disbarment, The Florida Bar v. Tarrant, 464 So.2d 1199 (Fla. 1985); The Florida Bar v. Breed, 378 So.2d 783 (Fla. 1979). Being convicted of a federal crime is grounds for disbarment, The Florida Bar v. Price, 478 So.2d 812 (Fla. 1985); The Florida Bar v. Bond, 460 So.2d 375

(Fla. 1984). Fleeing to escape prosecution is grounds for disbarment. The Florida Bar v. Travelstead, 435 So.2d 832 (Fla. 1983). Abandoning one's law practice is grounds for disbarment. The Florida Bar v. Merritt, 394 So.2d 1018 (Fla. 1981).

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD:

The Respondent was born in 1946 and became a member of The Florida Bar on March 27, 1978.

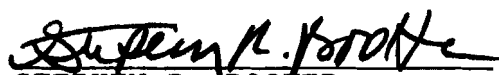
VI. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED:

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

Administrative Costs		
[Integration Rule 11.06(9)(a)]		
Grievance Level	\$	150.00
Referee Level		150.00
Court Reporter:		
Grievance Committee		
Hearing (October 5, 1983)		227.55
Final Hearing (August 25, 1986)		<u>112.15</u>
TOTAL	\$	<u>639.70</u>

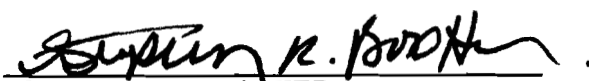
I recommend that \$639.70 in costs and expenses be charged to the Respondent. It is further recommended that execution issue with interest at the rate of twelve percent (12%) per year to accrue on all costs not paid within thirty (30) days of entry of the Supreme Court's final order unless the time for such payment is extended by the Board of Governors of The Florida Bar.

DATED this 2nd day of October, 1986.


STEPHEN R. BOOHER
REFEREE
Broward County Courthouse
201 SE 6th Street
Ft. Lauderdale, FL 33301

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Report of Referee was mailed to Robert F. Eimers, by certified mail (P-421-816-659), return receipt requested, at his record Bar address of 12 Diamond Drive, Key West, Florida 33040 and to Randi Klayman Lazarus, Bar Counsel, The Florida Bar, 211 Rivergate Plaza, 444 Brickell Avenue, Miami, Florida 33131, this 2nd day of October, 1986.


STEPHEN R. BOOHER
Referee
Circuit Judge
Broward County Courthouse
201 S.E. 6th Street
Ft. Lauderdale, FL 33301