

65,683

THE FLORIDA BAR,
Complainant,

CONFIDENTIAL

v.

The Florida Bar Case No. 17F84F38

JON JAY FERDINAND,
Respondent.

FILED
SID J. WHITE
AUG 2 1984

RESPONDENT'S CONDITIONAL
GUILTY PLEA FOR CONSENT JUDGMENT

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk *pl*

COMES NOW, Jon Jay Ferdinand, pursuant to article XI, Rule 11.13(6), Integration Rule of The Florida Bar, and hereby tenders his Consent Judgment for issuance of a Public Reprimand by the Supreme Court of Florida and states as follows:

1. Jon Jay Ferdinand, hereinafter referred to as Respondent, 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. Respondent agrees to accept, as a disciplinary sanction, a Public Reprimand, to be issued by the Supreme Court of Florida and published in the Southern Reporter, and a term of probation as hereinafter set forth.

3. Respondent further agrees that said Public Reprimand shall be administered by the Board of Governors of The Florida Bar and that Respondent shall personally appear before the Board of Governors for administration of his Public Reprimand.

4. On or about January 10, 1981, Mr. and Mrs. Benjamin Perrone (hereinafter referred to as the "Perrones"), were involved in an automobile accident resulting in injuries to both of them.

5. On or about January 29, 1981, the Perrones signed an Authority to Represent whereby they retained the Law Offices of Paul L. Backman (hereinafter referred to as "Backman") to represent them in any claim they might have against any party liable for their accident.

6. The Authority to Represent included a schedule of fees that was contingent upon recovery and the stage of the proceedings in which recovery was effectuated.

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7. The Perrones determined to accept an offer of \$25,000.00 in settlement of their claims after suit had been filed on their behalf.

8. Pursuant to the terms of the Authority to Represent, 40% of the recovery was to be the agreed attorney's fee.

9. Respondent was employed by Backman at the time the Authority to Represent was signed.

10. Notwithstanding the named parties to the Authority to Represent, the Perrones considered Respondent to be their sole attorney.

11. Respondent thereafter left Backman's office and established his own law office as a sole practitioner.

12. Pursuant to agreement, Respondent took the Perrones' file with him when he established his own office and was so employed at the time the Perrones' case was settled.

13. On or about November 16, 1982, the Perrones executed a Settlement Statement which included an agreed attorney's fee in the amount of \$10,000.00 but subject to an escrow letter dated November 16, 1982.

14. The escrow letter was occasioned by the Perrones objecting to any payment of fees to Backman.

15. Respondent had informed the Perrones, prior to their executing the Settlement Statement, that he was obligated to remit 40% of the \$10,000.00 attorney's fee (\$4,000.00) to Backman.

16. After the Perrones objected to the aforesaid division of fees, Respondent agreed to maintain the disputed sum of \$4,000.00 in his trust account pending resolution of the matter with Backman.

17. The aforementioned understanding was reflected in an escrow letter dated November 16, 1982.

18. Said escrow letter specifically stated that Respondent would await further word from the Perrones prior to disbursing the sum of \$4,000.00.

19. On or about November 16, 1982, the Perrones also reached an oral understanding with Respondent that should Backman waive his fee, Respondent would then receive an additional fee of \$2,400.00 and the Perrones would receive the remaining \$1,600.00 from the sum of \$4,000.00 held in trust.

20. Backman refused to waive his fee and Respondent was therefore not authorized to disburse the disputed sum of \$4,000.00 purportedly held in his trust account.

21. Respondent refused to release any money purportedly held in his trust account to the Perrones despite such demand being made by them.

22. Respondent eventually settled all outstanding disputes with Backman.

23. Respondent therefore considered his oral agreement previously reached with the Perrones as operative and that his sole obligation was to tender to them the sum of \$1,600.00.

24. Respondent believed that the Perrones had agreed to loan him the sum of \$1,600.00 until he could satisfy their claim.

25. Accordingly, on or about August, 1983, Respondent paid the Perrones the sum of \$700.00 and believed he owed them the additional sum of \$900.00 to satisfy their claim and the oral agreement related thereto.

26. Respondent had, in fact, disbursed the entire sum of \$4,000.00 from his trust account on or about November 17, 1982 despite the escrow agreement which prohibited him from doing so.

27. Respondent fully acknowledges that he acted improperly in representing to the Perrones that the sum of \$4,000.00 would be held in his trust account and then failing to honor that representation.

28. Respondent would posit, however, that the Perrones had no claim on the disputed \$4,000.00 and that any sum paid to them was gratuitous and neither required by law or ethics.

29. Respondent would further represent that the only party aggrieved by his actions was Backman and that all claims of Backman have been fully resolved to his complete satisfaction.

30. Respondent now realizes he acted in a very foolish manner in attempting to allay the concerns of these clients when they had absolutely no claim on the attorney's fees and then compounded his error by not abiding by the terms of the escrow letter.

31. Respondent is fully aware that the disputed attorney's fee should have remained in his trust account until he received authorization from the Perrones and Backman to disburse and without such authorization it was incumbent upon him to institute appropriate legal proceedings to determine entitlement to same.

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32. Should the Board of Governors of The Florida Bar or the Court so require, Respondent would be willing to place the sum of \$3,300.00 in his trust account (reflecting the \$4,000.00 less the \$700.00 paid to the Perrones) to restore the status quo and thereafter institute legal proceedings to establish the Perrone's entitlement to same.

33. Respondent acknowledges that the foregoing course of conduct was violative of Disciplinary Rules 1-102(A)(4) and 9-102 of the Code of Professional Responsibility and Article XI, Rule 11.02(4) of the Integration Rule of The Florida Bar.

34. As a consequence of the foregoing course of conduct, The Florida Bar caused Respondent to turn over certain trust account records.

35. A review of said records established that Respondent had not maintained his trust account in accordance with Article XI, Rule 11.02(4) of the Integration Rule of The Florida Bar and Bylaws Under the Integration Rule applicable thereto in the following particulars:

- a) Numerous instances of funds received for future costs not being placed in trust account;
- b) Numerous instances of funds received for future fees not being placed in trust account, without being designated as non-refundable retainers;
- c) Several instances where funds were initially disbursed from trust account for benefit of client in excess of funds being held for said client but all such overpayments were restored to the trust account; and
- d) Several instances where funds were disbursed from the trust account for the benefit of client which funds were drawn on uncollected funds but all such funds did eventually clear.

36. Respondent agrees to be placed on probation for a period of one (1) year and as a condition of said probation to retain the services of a Certified Public Accountant at his own expense. Said accountant will review Respondent's trust account




records, wherever situated, and submit monthly reports to the Branch Staff Auditor of The Florida Bar stating whether Respondent is in substantial compliance with the current rules promulgated by this Court as they relate to trust accounts. The services of said accountant will include, but not be limited to, providing monthly reconciliations of Respondent's trust account to the Branch Staff Auditor.

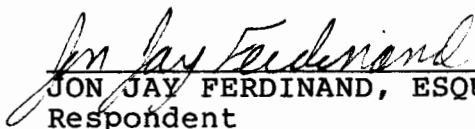
This Consent Judgment will be of no force and effect if not approved by the Board of Governors of The Florida Bar and the Supreme Court of Florida.

If this Consent Judgment is approved, Respondent agrees to pay costs in the amount of \$342.85 within thirty (30) days of the Supreme Court's final order approving this Consent Judgment. Respondent further agrees that the Supreme Court can publish the facts and violations relating to this Consent Judgment in any order it issues approving same.

DATED this 5th day of June, 1984.

Respectfully submitted,


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Respondent
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