

IN THE SUPREME COURT OF FLORIDA

(Before a Referee)

THE FLORIDA BAR,

Complainant,

-vs-

CASE NO. 65,894

JAMES ALBERT DALE, III,

Respondent.

FILED
SUPREME COURT
APR 23 1985

CLERK, SUPREME COURT

JUDGMENT OF GUILT AND REPORT OF REFEREE

THIS MATTER was heard pursuant to the Order to Show Cause and Order Appointing Referee of the Supreme Court of Florida, dated Monday, April 22, 1985, which ordered that James Albert Dale, III, Respondent, show cause why he should not be held in contempt of court for the unauthorized practice of law. After hearings where evidence was presented by both parties on the merits of the case and in mitigation, and after consideration of the written arguments of counsel and the law in such matters, the Referee makes the following findings of fact, conclusions of law, and recommendations:

I. Finding of Fact:

1. The Respondent, JAMES ALBERT DALE, III, (hereinafter referred to as "the Respondent" or "Dale") is not now nor has he ever been authorized to practice law in the State of Florida.

2. The Respondent is the President and manager of Dale Title Company, Inc., a title insurance agency doing business in Pensacola, Escambia County, Florida, and in such capacity the Respondent issues commitments for title insurers doing business in the State of Florida.

3. The Respondent is or has been authorized to practice law in the State of Mississippi and is a graduate of the University of Mississippi Law School. In soliciting business for his title insurance company the

Respondent has, from time to time at meetings with realtors, told realtors and perhaps others that he is lawyer.

4. On or about the 14th day of October, 1981, one Harold R. Page (hereinafter referred to as "Page"), a real estate sales person with C. Rosalynn Farrell, Inc., a real estate broker in Escambia County, Florida, represented the seller/owner of a restaurant and lounge business in Escambia County, Florida, known as The Palms Restaurant, and Page did in that capacity procure buyers for The Palms Restaurant, the same being Bal Krishan Bahl and Abhimadu Kumar Chaddah (hereinafter referred to collectively as "Bahl").

5. On or about the 14th day of October, 1981, Page referred Bahl to Dale for assistance in connection with the purchase of The Palms Restaurant. The Palms Restaurant purchase and sale involved both the acquisition and transfer of title to real property as well as equipment, inventory, and certain intangibles, including an alcoholic beverage license.

6. At that time and in connection with the referral of Bahl by Page to Dale, the Respondent Dale held himself out to Bahl as being able to render assistance with legal problems concerning real property transactions and the purchase and sale of The Palms Restaurant.

7. During the period of time between October 14, 1981, and October 28, 1981, inclusive, the Respondent Dale agreed to and did in fact render assistance and advice or counsel to Bahl in connection with the purchase and sale of The Palms Restaurant in at least the following respects:

a) On or about October 14 at a meeting at offices of Dale Title Company, Inc., in Pensacola, Florida, the Respondent agreed to:

(1) advise Bahl as to whether or not he had made a "good deal" for the purchase of The Palms Restaurant,

(2) investigate certain matters involving a mortgage covering the property in favor of the First National Bank of Pensacola,

(3) examine the title to the real property which was to be transferred and

(4) examine and advise Bahl regarding the closing documents in connection with the transaction.

b) On or about October 14 at the above meeting at Dale Title Company, Inc., the Respondent Dale advised Bahl of certain alternatives Bahl might have in connection with the type of business organization which Bahl could form to take title to the real property and/or the business or both.

(c) During the week of October 19, 1981 Dale met with Page and Bahl and discussed a problem concerning the assumption of a mortgage in favor of the First State Bank of Pensacola which encumbered the property to be transferred to Bahl. Dale suggested a manner in which Bahl might resolve this problem. Further Dale agreed to contact and in fact did contact and talk with a representative of the First State Bank of Pensacola in Bahl's behalf with respect to the assumption of that mortgage.

(d) During the week of October 19, 1981 Dale advised Bahl as to the meaning and nature of a wrap around mortgage and advised Bahl that a wrap around mortgage would be a satisfactory alternative to the assumption of the mortgage in favor of the First State Bank of Pensacola which assumption was apparently not going to be allowed by First State Bank. During the week of October 19, 1981 Dale discussed and conferred with Bahl regarding certain changes to the contract for the purchase and sale of The Palms Restaurant which changes had to do with the assumption of the mortgage in favor of the First State

Bank, a change in the contract with respect to the real estate commission to be paid in connection with the purchase and sale to C. Rosalynn Farrell, Inc., and with respect to a contract provision providing for deferred payments of the real estate commissions to C. Rosalynn Farrell, Inc., and a mortgage to secure said deferred payments.

e) On or about October 22, 1981, the Respondent Dale went to the office of the seller's counsel and there met and conferred with Bahl and spoke in Bahl's behalf to seller's counsel with respect to negotiation of several issues regarding the transaction involving the purchase and sale of The Palms Restaurant, said issues including at least the following:

- (1) the sales price for the property,
- (2) the amount of cash necessary to close the transaction,
- (3) the wrap around mortgage in favor of seller with interest payable weekly,
- (4) the requirement that the purchasers maintain a checking account with the First State Bank until the purchase money note was paid in full,
- (5) the requirement that seller receive a financial statement of the restaurant operation each month,
- (6) a contract between the purchasers and the seller regarding the employment of certain relatives of seller,
- (7) the requirement of the security agreement that no equipment be sold or traded without permission of the seller or the holder of the security interest,
- (8) certain requirements of the mortgage and security agreement to be given seller regarding hazard insurance,
- (9) a requirement that certain financial statements be given by Bahl to the seller,
- (10) the liquor license to be transferred by seller to buyer in connection with the transaction,

(11) outstanding bills or claims against the sellers in connection with the restaurant operations including utility bills, bills for improvements to the property and telephone bills,

(12) purchase money liens if any which may have existed as to certain items of personal property on the premises,

(13) certain warranties on equipment to be transferred by sellers to buyers,

(14) an inventory of the premises to be conducted at or prior to closing,

(15) who as between attorneys for the seller and Dale would prepare which documents in connection with the transaction.

8. In connection with Dale's role in the purchase and sale of The Palms Restaurant, Dale proposed to charge a premium for the issuance of title insurance in connection with the transaction which was substantially in excess of the rate normally charged for such insurance in the Pensacola area. When the seller's counsel objected to the excessive charge Dale agreed to reduce the charge to "card rate".

9. At some point prior to the closing of the transaction involving the purchase and sale of The Palms Restaurant, which closing was conducted on or about October 28, 1981, Dale advised Bahl that title to the property was "clear."

10. At or prior to closing on or about October 28, 1981, Dale advised Bahl that Bahl need not be concerned about the sellers properly completing the construction on The Palms Restaurant premises because if such construction was not properly and promptly completed he (Dale) felt that Bahl could decline to make the weekly payments on the wrap around mortgage in favor of sellers unless and until the sellers properly completed that work.

11. At the closing of the transaction involving the purchase and sale of The Palms Restaurant on or about October 28, 1981, Dale further acted in Bahl's behalf and conferred with or advised Bahl further as follows:

a) Dale met with Bahl just prior to closing to discuss additional matters including Bahl's continuing concern with respect to weekly mortgage payments Bahl's concern that Dale examine the closing documents and give him some assurance that the closing documents were satisfactory and Bahl's concern with respect to the interest rate being charged by the sellers.

b) During the course of the closing Dale approved documents prior to Bahl's execution of them.

c) During the course of the closing an issue arose with respect to the transfer of the liquor license as well as the issue of the weekly mortgage payments. At one point Dale and Bahl left the closing room to confer in private with respect to one or both of those issues. Dale advised Bahl that the proposal of the sellers with respect to closing in escrow to avoid a problem with respect to transfer of the liquor license was appropriate.

12. On or about the 20th day of August, 1980 at the request of Community Mortgage and Investment Corporation d/b/a Community Finance, Dale Title Company, Inc. closed a loan transaction wherein Community Mortgage and Investment Corporation loaned Grady Alford and Angie L. Alford, husband and wife, the sum of Nineteen Thousand Five Hundred (\$19,500) Dollars. That loan is evidenced by a promissory note dated August 29, 1980, which note was secured by a mortgage executed and delivered that same date by the Alfords, which mortgage was recorded in the public records of Okaloosa County, Florida, on or about September 8, 1980, in Official Records Book 1098, Page 99, and Page 100.

13. Subsequent to the execution and delivery of the mortgage by the Alford's in favor of Community Finance, Mrs. Angie Alford applied for an additional loan from another lender in Okaloosa County, Florida. Mrs. Alford was advised by the third party lender that no mortgage other than the first mortgage existed as to Mrs. Alford's property. Mrs. Alford then contacted Community Finance with respect to the question of whether or not her property, Lot 8, Block "F", Seminole Sub-division, was in fact encumbered by a mortgage in favor of Community Finance.

14. Mrs. Alford made arrangements to go to Community Finance on Monday of the following week to execute whatever papers might be necessary to cure the defect with respect to the mortgage in favor of Community Finance.

15. Upon learning of the error with respect to the mortgage transaction closed at Dale Title Company, Inc., the Respondent undertook a course of action to cure the title defect with respect to the mortgage which he had previously insured or agreed to insure in behalf of his principal.

16. The Respondent Dale obtained a document entitled, "Corrective Mortgage" dated December 9, 1980, and recorded December 17, 1980, in Official Records Book 1106, Page 533 and Page 534 of the public records of Okaloosa County, Florida. The said "Corrective Mortgage" was not signed by Grady Alford or Angie Alford. The purported execution of the "Corrective Mortgage" was witnessed by and according to the Respondent as Notary Public, "acknowledged before" the Respondent on or about December 9, 1980.

II. Conclusions of Law:

1. By his direct statements to Bahl the Respondent Dale did affirmatively represent that he was able and willing to render legal assistance and counsel to Bahl in connection with the purchase and sale of The Palms Restaurant. Even without a specific statement to that

effect by the Respondent Dale to Bahl, the Respondent Dale, by displaying his diplomas, certificates and other credentials, by describing himself as a lawyer, by failing to affirmatively disclaim his ability to render assistance in connection with matters involving the purchase and sale of real estate under the circumstances of this case and by failing to affirmatively recommend that Bahl obtain legal advice in connection with the purchase and sale of The Palms Restaurant, held himself out as being willing and able to render legal assistance in connection with the purchase and sale of real estate, i.e. The Palms Restaurant location.

2. By his advice, counsel, assistance and representation of Bahl as set forth hereinabove, the Respondent gave such advice and performed such services as affected the important rights of Bahl under the law, which rights would require that persons giving advice with respect to same possess legal skill and knowledge of the law greater than that possessed by the average citizen, and therefore such advice, counsel, assistance and representation constituted the practice of law by the Respondent.

3. In advising Bahl with respect to the alternatives for taking title, by advising Bahl that the title was "clear" and by advising Bahl with respect to the other matters indicated hereinabove with respect to the details of the contract for the purchase and sale of The Palms Restaurant, the changes and amendments to that contract, the details of the provisions of the documents to effect the closing of that purchase and sale as evidenced by the contract and by his counsel at said closing, the Respondent Dale exceeded the prerogative afforded title insurance companies in the State of Florida, and his conduct constituted the practice of law.

4. By undertaking to prepare the corrective mortgage, arranging for its execution and recording, and otherwise by undertaking a course of conduct to cure a

defective mortgage interest previously insured by Respondent, the Respondent Dale exceeded the authority granted to title insurance companies in Florida in that the Respondent prepared a mortgage under circumstances not contained in a title insurance commitment and further opined as to the sufficiency of the document when, in fact, the legal efficacy of the document was suspect or clearly void. This constituted the practice of law.

III. Recommendations for Final Disposition:

1. The Respondent should be permanently enjoined from holding himself out or from using any accolation which expressly or impliedly suggests that he is licensed to engage in the practice of law in the State of Florida.

2. The Respondent should be permanently enjoined from describing himself as a lawyer or attorney and should be required to remove indicia of his status as a lawyer from public view in the offices of Dale Title Company.

3. The Respondent should be permanently enjoined from giving legal advice and counsel to others concerning real estate transactions or any other matters.

4. The Respondent should be enjoined from doing any act or thing in connection with a real estate transaction other than those acts specifically necessary to inform himself and his company as to the status of a title which he may be called upon to insure and to fulfill the conditions of a title insurance commitment issued by the Respondent's title insurance company prior to closing.

5. The Respondent should be adjudicated guilty of indirect contempt of the Supreme Court of Florida by virtue of his engaging in the unauthorized practice of law.

6. The Respondent should be incarcerated in the Escambia County Jail for a period of 48 hours.

7. Respondent should be required to pay a fine in the amount of \$2,500.00.

8. The Respondent should be ordered to reimburse the Florida Bar for its loss in connection with the

prosecution of this proceedings which is found to be \$3,384.25.

Pursuant to Article 17 of the Intergration Rule it is ADJUDGED that Respondent James Albert Dale, III, should be and is hereby adjudicated guilty of the unauthorized practice of law.

IT IS SO ORDERED and this Report submitted this 9th day of December, 1985.



LACEY A. COLLIER
CIRCUIT JUDGE
REFEREE

Copies furnished to:

✓ Phillip A. Bates, Esquire
EMMANUEL, SHEPPARD & CONDON
30 South Spring Street
Pensacola, Florida

✓ John A. Weiss, Esquire
ANDERSON & WEISS
1018 Thomasville Road
Suite 116
Tallahassee, Florida 32303