

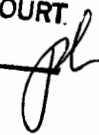
IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,
v.
GERALD DAVID BABBITT,
Respondent.

CONFIDENTIAL

Case No. 66,455
(TFB No. 02-83-16)

FILED
SID J. WHITE
APR 25 1985

CLERK, SUPREME COURT
By 
Chief Deputy Clerk

REPORT OF REFEREE

1. Summary of Proceedings

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to article XI of the Integration Rule of The Florida Bar, the following proceedings occurred:

On February 12, 1985, Respondent in this matter tendered an Conditional Guilty Plea in exchange for the Bar's recommendation as to discipline. The Conditional Guilty Plea, Joint Recommendation as to Discipline, all of which are forwarded to the Supreme Court of Florida with this report, constitute the record in this case.

II. Findings of Fact as to Each Item of Misconduct of Which the Respondent is Charged

After considering all the pleadings, I find:

1. That in March 1977, the Respondent, together with Andrew Panholzer, formed a Maryland corporation called the New Century Corporation for the purpose of building and selling homes. Respondent held 25 percent of the

corporate stock and was a vice president of the corporation.

2. On April 8, 1979, New Century executed a contract with Arnold and Lee Johnson (Johnsons) to construct a home on corporate property in Owings, Maryland. Settlement or closing on the house was to occur no later than October 15, 1979.
3. In conjunction with the construction contract, the Johnsons had received a loan commitment from Advance Mortgage Corporation for a mortgage rate of 11 percent. This commitment was good until October 15, 1979.
4. Due to construction delays, the settlement/closing was delayed causing the loan commitment to expire. As a result, the Johnsons were required to renegotiate their contract at the higher mortgage rate of 12-3/4 percent with an extension date of December 1, 1979.
5. New Century Corporation was required to make concessions to the Johnsons amounting to a reduction in the purchase price and related costs at closing.
6. On the day of settlement, the lender notified Respondent that it would be necessary to have a Calvert County Use and Occupancy Permit (permit) for settlement/closing. Respondent had not obtained such permit for submission to the lender.
7. The lack of such permit by New Century would have caused a further delay in the closing and the loan commitment to the Johnsons by the lender.

8. At the direction of Respondent, New Century's secretary photocopied a bona fide permit bearing the signature of the Calvert County Building Inspector. Certain portions of this document had been whited out and materially altered so as to reflect it being a genuine and proper document for the Johnson property.
9. The fraudulent permit was included with the closing documents forwarded to the realtor for the settlement on the Johnson property. The settlement occurred as scheduled with New Century receiving its purchase price.
10. Subsequent to the closing, New Century went bankrupt without ever having obtained a valid Use and Occupancy Permit for the Johnsons.
11. As a result of the Respondent's actions, Respondent was suspended from the practice of law in Maryland for 60 days, from September 23, 1984 to November 28, 1984.
12. Respondent's actions constitute a violation of Disciplinary Rule 1-102(A)(4) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation) of the Code of Professional Responsibility of The Florida Bar.

III. Recommendations as to Whether the Respondent Should be Found Guilty

I recommend that the Respondent's Conditional Plea of Guilty be accepted and specifically that he be found guilty of the following violation of the Code of Professional Responsibility:

DR 1-102(A)(4) Conduct involving dishonesty, fraud, deceit or misrepresentation.

IV. Recommendation as to Disciplinary Measures to be Applied

I recommend that Respondent be disciplined by:

A. A sixty-day suspension from the practice of law in Florida.

B. Payment of costs in these proceedings.

V. Personal History and Past Disciplinary Record

Prior to recommending discipline pursuant to article XI, Rule 11.06(9)(a)(4), I considered the following personal history of Respondent, to wit:

Age: 45

Date admitted to Bar: June 7, 1967

Prior Discipline: None

VI. Statement of Costs and Manner in Which Costs Should be Taxed

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

A. Grievance Committee Level Costs

1. Administrative Costs	\$150.00
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B. Referee Level Costs

1. Administrative Costs	<u>150.00</u>
TOTAL	\$300.00

It is recommended that such costs be charged to the Respondent, and that interest at the statutory rate shall accrue and be payable beginning 30 days after the judgment in this case becomes final unless a waiver is granted by the Board of Governors of The Florida Bar.

Dated this 24th day of April, 1985.

William C. Gandy
Referee

Copies to:

James N. Watson, Jr., Staff Counsel of The Florida Bar
Gerald David Babbitt, Respondent