

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,
v.
S. EDWARD GROOT,
Respondent.

PUBLIC

Case No. 66,457
05A85C13 (The Florida Bar)
05A85C15 (Walter)
05A85C25 (Noah)

REPORT OF REFEREE

SUMMARY OF PROCEEDINGS

FILED
SID J. WHITE
NOV 8 1985

CLERK, SUPREME COURT
By *[Signature]*
Deputy Clerk

Pursuant to the undersigned being appointed as Referee to conduct disciplinary proceedings herein according to Article XI of the Integration Rule of The Florida Bar, hearings were held on 1 August 1985 and 4 October 1985.

All pleadings, notices, motions, orders, transcripts and exhibits are forwarded to the Supreme Court of Florida along with this report and they constitute the entire record in this case.

The following attorneys appeared as counsel for the parties:

For the Florida Bar - David G. McGunegle, Esq.

For the Respondent - Pro Se

FINDINGS OF FACT AS TO EACH CHARGE OF MISCONDUCT

After considering all pleadings, papers and evidence presented the undersigned Referee finds that:

I

(As to All Counts in the Complaint)

1. At all times material hereto, Respondent, S. Edward Groot, was and still is a member of The Florida Bar and subject to the jurisdiction and Disciplinary Rules of The Supreme Court of Florida. Respondent last practiced law in Florida at a law office located in Marion County.

2. Respondent moved to the State of Michigan during July 1984 and commenced working with the Michigan State Legislature for an annual salary ranging from \$34,000 to \$35,000.

3. At the time of the first hearing, on 1 August 1985, Respondent was still employed by the Michigan State Legislature. On 4 October 1985, Respondent was unemployed and seeking work.

4. During the period from 23 January 1985 through 4 October 1985, Respondent did not pay any restitution to any aggrieved party.

5. Respondent's statement in mitigation and the reasons given for his misconduct are void of any merit.

II

(As to Count I of the Complaint [05A85C13])

6. In November of 1983, Respondent borrowed \$10,000 from Mr. William R. Daggett. Mr. Daggett was Respondent's client. The debt was evidenced by a promissory note secured by a mortgage on Respondent's home and was to have been paid by 1 March 1984. Before entering into this business transaction, Respondent did not disclose to Mr. Daggett that their interests could conflict or that Mr. Daggett should consult with other counsel regarding the transaction.

7. Respondent prepared, executed and retained the original promissory note and original mortgage which he represented as a second mortgage on his property. These documents were not recorded and Mr. Daggett was not so advised. Furthermore, the mortgage Respondent represented as a second mortgage was actually a third because his property was already encumbered by two mortgages.

8. Respondent did not pay the loan when due and made only partial payment totaling about \$3,350.00 by July 1984.

9. On 19 July 1984, Respondent tendered his law office trust account check for \$4,457.35 to Homestead Title Trust Account. This check was presented to payee (Homestead), as closing agent, on behalf of Mr. Daggett to effectuate the closing of Mr. Daggett's real estate purchase. Insofar as Mr. Daggett and Respondent were concerned, the check was also intended to be a further partial payment on the \$10,000.00 loan. There was no money in Respondent's trust account so the check was dishonored by Sun Bank and returned to Homestead Title marked "Account Closed". Respondent has failed to forward any money to Homestead Title, Inc. regarding the \$4,457.35 check.

10. After his real estate purchase, Mr. Daggett discovered Respondent had failed to record the \$10,000.00 promissory note and mortgage. As a result, Respondent executed a new promissory note and mortgage, during September of 1984, for \$3,350.00. This \$3,350.00 represented the principal balance and interest then due on the original loan after Respondent received credit for partial payment actually made and the \$4,457.35 to have been received by Homestead Title, Inc.

11. With regard to Respondent's \$4,457.35 trust check made payable to Homestead Title Trust Account, the Respondent did, on 31 December 1984, enter his pleas of nolo contendere to the crimes of grand theft and worthless check. These nolo contendere pleas were entered in the Circuit Court of Marion County, Florida, Case No. 84-2045-CF-A-Y wherein the Court did, on 31 December 1984: withhold adjudication of Respondent's guilt; place Respondent on probation for a period of three (3) years; and require him to pay restitution and costs.

III

(As to Count II of the Complaint [05A85C15])

12. Mr. Hansruedi Walter retained Respondent to represent him. In Mr. Walter's behalf, Respondent prepared a contract for the purchase of real property. Mr. Walter signed the contract on 11 July 1984, and with regard to the anticipated purchase, gave Respondent his \$5,000.00 check made payable to Respondent's law office trust account. Respondent deposited the check in his law office trust account on 12 July 1984. Thereafter, seller placed conditions on the transaction which were unacceptable to Mr. Walter, thus Mr. Walter's purchase did not take place.

13. Since his purchase did not close, Mr. Walter requested Respondent to return his \$5,000.00. Respondent informed Mr. Walter it would take a few days but Respondent would get the money to him. On several subsequent occasions Mr. Walter requested Respondent to return his money and Respondent promised he would do so. Respondent has acknowledged he owed Mr. Walter the \$5,000.00 but, as of 4 October 1985, only \$500.00 had been returned by Respondent to Mr. Walter.

14. On 23 July 1984, there was no money on deposit in Respondent's law office trust account.

15. With regard to Mr. Walter's money, Respondent did, on 31 December 1984, enter his plea of nolo contendere to the crime of grand theft. This plea of nolo contendere was entered in the Circuit Court of Marion County, Florida, Case No. 84-1950-CF-A-X. In disposing of Respondent's plea, the Court did, on 31 December 1984: withhold adjudication of Respondent's guilt; place Respondent on probation for a period of three (3) years; and require him to pay restitution and costs.

IV

(As to Count III of the Complaint [05A85C25])

16. Mr. John S. Noah retained Respondent to represent him in a claim against Grandfather Mountain and Fireman's Fund Insurance. Toward the end of calendar year 1983, the claim was settled out-of-court for \$7,500.00.

17. Respondent received the settlement check and it was agreed Respondent would receive a professional fee of \$2,500.00 and Mr. Noah would receive the remaining \$5,000.00. Around 24 January 1984, Mr. Noah was given Respondent's trust check in the amount of \$5,000.00 which he immediately deposited into his personal checking account. Respondent's check was returned for "insufficient funds". In the meantime, Mr. Noah had written personal checks for approximately \$4,300.00 to pay medical bills and for a deposit on a lot. When Respondent's trust account check "bounced" Mr. Noah's checking account became overdrawn by more than \$4,000.00.

18. Mr. Noah then borrowed \$5,000.00 from another local bank to cover the checks he had written. Mr. Noah spoke with Respondent who advised that he had closed on an account in Miami and the money had not cleared from England so it would take fifteen to twenty days before Respondent could make his trust check good. About three months later, Mr. Noah received a cashier's check from Respondent for \$3,000.00. In June of 1984, Mr. Noah received another cashier's check from Respondent in the sum of \$1,000.00. As of 4 October 1985, Mr. Noah had not received the remaining \$1,000.00 owed him by Respondent.

RECOMMENDATIONS AS TO WHETHER OR NOT RESPONDENT
SHOULD BE FOUND GUILTY

As to each count of the complaint the undersigned makes the following recommendation as to Respondent's guilt or innocence:

I

(As to Count I of the Complaint [05A85C13])

The undersigned recommends that Respondent be found guilty and specifically that he be found guilty of violating the following Integration Rules of The Florida Bar and/or Disciplinary Rules of the Code of Professional Responsibility, to wit:

1. IR 11.02(3) (a) for engaging in conduct contrary to honesty, justice or good morals; and,

2. DR 1-102(A)(3) for engaging in illegal conduct involving moral turpitude by defrauding Homestead Title, Inc.; and,

3. DR 1-102(A)(4) for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; and,

4. DR 1-102(A)(6) for engaging in other misconduct reflecting adversely on his fitness to practice law; and,

5. DR 5-104(A) for conducting an improper business transaction with a client; and,

6. DR 5-105(A) for accepting employment when a possible conflict existed.

II

(As to Count II of the Complaint [05A85C15])

The undersigned recommends that Respondent be found guilty and specifically that he be found guilty of violating the following Integration Rules of The Florida Bar and/or Disciplinary Rules of the Code of Professional Responsibility, to wit:

1. IR 11.02(3)(a) for engaging in conduct contrary to honesty, justice and good morals; and,

2. IR 11.02(4) for failing to promptly account to his client upon demand and converting trust funds to his own personal use; and,

3. DR 1-102(A)(3) for engaging in illegal conduct involving moral turpitude; and,

4. DR 1-102(A)(4) for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; and,

5. DR 1-102-(A)(6) for other misconduct reflecting adversely on his fitness to practice law; and,

6. DR 9-102(B)(3) for failing to render an appropriate accounting to a client; and,

7. DR 9-102(B)(4) for converting trust funds to his own personal use.

III

(As to Count III of the Complaint [05A85C25])

The undersigned recommends that Respondent be found guilty and specifically that he be found guilty of violating the following Integration Rules of The Florida Bar and/or Disciplinary Rules of the Code of Professional Responsibility, to wit:

1. IR 11.02(3)(a) for engaging in conduct contrary to honesty, justice or good morals; and,

2. IR 11.02(4) for failing to account and converting trust funds to his own personal use; and,

3. DR 1-102(A)(3) for engaging in illegal conduct involving moral turpitude; and,

4. DR 1-102(A)(4) for engaging in conduct involving fraud, misrepresentation, deceit or dishonesty; and,

5. DR 1-102(A)(6) for other misconduct reflecting adversely on his fitness to practice law; and,

6. DR 9-102(B)(3) for failing to render an appropriate accounting of trust funds to a client; and,

7. DR9-102(B)(4) for failing to promptly deliver trust funds upon request and converting these funds to his own use.

RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

The undersigned recommends that the Respondent, S. EDWARD GROOT, be disbarred from the practice of law in Florida.

PERSONAL HISTORY AND PAST DISCIPLINARY RECORD

After finding of guilty and prior to recommending discipline to be recommended pursuant to Rule 11.06(9)(a)(4), the undersigned considered the following personal history and prior disciplinary record of the Respondent, to wit:

1. Age: 44
2. Date admitted to Bar: 1976
3. Prior disciplinary convictions and disciplinary measures imposed therein: None
4. Other personal data: Married with minor children

STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

The undersigned finds the following costs were reasonably incurred by The Florida Bar.

A. Grievance Committee Level Costs

1. Administrative Costs	\$ 150.00
2. Transcripts of Grievance Committee Hrg., 10/11/84	90.50
3. Branch Staff Counsel Travel Costs, 10/11/84	28.32
4. Transcript of Grievance Committee Hrg., 11/8/84	24.00
5. Branch Staff Counsel Travel Costs, 11/8/84	10.18

B. Referee Level Costs

1. Administrative Costs	150.00
2. Transcript of Referee Hrg., 8/1/85	139.25
3. Bar Counsel Travel Expenses, 8/1/85	44.54
4. Transcript of Referee Hrg., 10/4/85	305.50
5. Bar Counsel Travel Costs 10/4/85	59.07

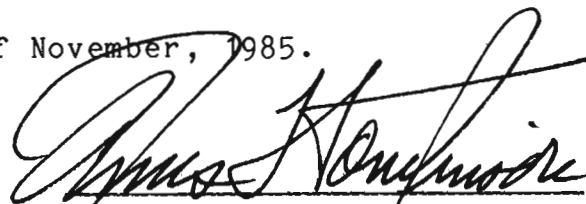
C. Miscellaneous Expenses

1. Staff Investigator's Expenses	267.64
2. Long Distance Telephone Charges	<u>9.89</u>

TOTAL ITEMIZED COSTS: \$1,278.89

It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses together with the foregoing itemized 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 6th day of November, 1985.



JAMES L. TOMLINSON, Referee

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