

IN THE SUPREME COURT OF FLORIDA
BEFORE A REFEREE

THE FLORIDA BAR,
Complainant,

v.

ARTHUR V. WOODWARD,
Respondent.

CONFIDENTIAL

Case Nos. 66,679 and 67,795

TFB File Nos. 20B84F16 and
20B85F33

FILED
SID J. WHITE

JUN 18 1986

CLERK, SUPREME COURT

By _____
Deputy Clerk

AMENDED REFEREE'S REPORT

I. SUMMARY OF PROCEEDINGS: Heretofore, by orders of the Supreme Court of Florida dated March 19, 1985 and October 27, 1985, I was appointed referee herein to determine all matters in both of the above referred to disciplinary proceedings. By instrument dated January 30, 1986 respondent tendered a conditional guilty plea for a consent judgment covering both proceedings which was presented to me for approval by petition dated February 4, 1986. Upon considering the pleadings heretofore filed, the conditional guilty plea and the application for approval thereof and due deliberation having been had thereon, I have determined to grant such application and approve the conditional guilty plea for consent judgment as tendered. On May 5, 1986 I filed with the Supreme Court of Florida an amended referee's report submitted pursuant to the Court's directive that I file such amended report and specifically enumerate my findings of fact therein. Through clerical error, the amended report filed on May 5, 1986 was filed in error and the same is hereby ordered vitiated with this amended report to be substituted and filed in place and stead thereof.

David M. Barnovitz, bar counsel, appeared for the complainant.
John R. Asbell, Esquire, appeared for the respondent.

II. FINDINGS OF FACT AS TO EACH ITEM OF MISCONDUCT FOR WHICH RESPONDENT IS CHARGED: I make the following findings of fact:

A. Respondent is and at all times mentioned in the bar's complaint, was, a member of The Florida Bar subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

B. In September, 1980, one Hendrik Reymers (hereinafter called "Reymers"), a foreign national, employed respondent to act as his

attorney.

C. In order for respondent to be able to act for him in Reymers' absence, Reymers entered into a land trust agreement constituting respondent as his trustee.

D. In September, 1981, acting as Reymers' attorney and trustee, respondent sold two (2) condominium units owned by Reymers to another of respondent's clients, Old Marco Resort Development Limited (hereinafter called "Old Marco").

E. In connection with such sale respondent, on behalf of Reymers, took back two (2) purchase money mortgages covering the two (2) condominium units sold.

F. Title closed on September 10, 1981 and respondent thereafter, on September 11, 1981 caused the deeds he had executed in favor of Old Marco to be duly recorded. Respondent did not record the two (2) purchase money mortgages at that time.

G. On September 10, 1981, in connection with a loan advanced to it by Exchange Bank of Collier County (hereinafter called "Bank") respondent represented Old Marco upon its execution of and delivery to the Bank of a mortgage dated that date in the principal sum of \$1,000,000.00 covering, among other realty, the two (2) condominium units sold to Old Marco by Reymers.

H. Respondent then, on September 11, 1981, immediately after causing the two (2) deeds from Reymers to Old Marco to be recorded, recorded the \$1,000,000.00 mortgage given by Old Marco to the Bank.

I. Respondent recorded the two (2) purchase money mortgages given by Old Marco to Reymers on September 28, 1981.

J. In addition to acting as attorney for both Reymers and Old Marco, respondent acted as agent for a title company and issued a title insurance policy to the Bank in connection with its \$1,000,000.00 loan which policy did not reflect the existence of the two (2) purchase money mortgages given by Old Marco to Reymers.

K. In December, 1981, respondent loaned to Old Marco the sum of \$150,000.00 taking back a note secured by a mortgage covering realty owned by Old Marco, including the two (2) condominium units sold by Reymers to Old Marco. Respondent recorded such mortgage on July 23, 1982.

L. In March, 1982, respondent, still acting as attorney for both Reymers and Old Marco, executed and recorded satisfactions of each of the two (2) purchase money mortgages given by Old Marco to Reymers. Neither of the underlying notes was fully paid at that time.

M. All of the above transactions concerned a time share project under development by Old Marco. The project failed resulting in a loss to Reymers of \$149,000.00 owing by Old Marco under the promissory notes aforesaid and respondent's loss of the \$150,000.00 loan he extended to Old Marco.

N. Respondent has no documentation to controvert the bar's assertion that in the above transactions respondent did not disclose to Reymers nor secure his consent to: the multiple representations, the fact that respondent accepted purchase money mortgages upon the sale to Old Marco, the fact that respondent created a priority of lien in favor of the Bank by recording the Bank mortgage before recording the two (2) Reymers mortgages, the fact that respondent acted as agent for the title company in issuing a title insurance policy to the Bank, the fact that respondent personally loaned money to Old Marco secured by a note and mortgage covering the two (2) Reymers units and the fact that respondent satisfied the two (2) Reymers mortgages without receiving payment of the underlying notes.

III. RECOMMENDATIONS AS TO WHETHER OR NOT RESPONDENT SHOULD BE FOUND GUILTY: In its complaint in case 66,679, the bar charged with respondent with violations of Disciplinary Rules 5-105(A), 5-105(B) and 1-102(A) (6) of the Code of Professional Responsibility and a violation of Fla. Bar Integr. Rule, article XI, Rule 11.02(2). In case 67,795, arising out of the same transaction which is the subject of the complaint in 66,679, the bar charged respondent with violations of Disciplinary Rules 5-105(A), 5-105(B), 7-101(A) (1), 1-102(A) (4) and 1-102(A) (6) of the Code of Professional Responsibility.

By his conditional guilty plea, agreed to by bar counsel and approved by the designated reviewer pursuant to Fla. Bar Integr. Rule, article XI, Rule 11.13(6) (b), respondent pled guilty to the Canon 5 violations asserted by the bar, in full disposition of both cases. I granted the application submitted to me seeking approval of such conditional guilty plea.

I therefore recommend that respondent be found guilty of violating Disciplinary Rules 5-105(A) and 5-105(B) of the Code of Professional Responsibility and that he be found not guilty of the remaining violations charged by the bar, viz., Disciplinary Rules 1-102(A) (4), 1-102(A) (6) and 7-101(A) (1) of the Code of Professional Responsibility and Integration Rule 11.02(2). In making my recommendation I adopt respondent's own assessment of an attorney's responsibilities to secure written consent and disclosure in a potential conflict milieu. His view, as recited in paragraph 15 of his conditional guilty plea, bears repeating:

It is an attorney's responsibility in a potential conflict milieu to avoid even an appearance of impropriety. It is therefore incumbent upon an attorney in such a situation to document his full disclosure of the conflicts and the possible ramifications of his continued representation and the client's endorsement of both the disclosure and the representations. It is only by such careful documentation that an attorney can refute the charge of failure to fulfill the requirements expressed in Canon 5 of the Code of Professional Responsibility. Such written disclosure and consent is even more pressing when an attorney, as trustee, acts for his client in non-cash transactions, discharging liens to secure his client's position and acquiring a personal interest in the very collateral securing his client's position.

IV. RECOMMENDATIONS AS TO DISCIPLINARY MEASURES TO BE APPLIED: I recommend as discipline in this matter that the respondent be suspended from The Florida Bar for a period of ten (10) days.

V. PERSONAL HISTORY: Respondent was admitted to The Florida Bar on June 4, 1971 and is 59 years of age.

VI. STATEMENT AS TO PAST DISCIPLINE: Respondent previously received a private reprimand upon a finding of minor misconduct and has no other disciplinary record.

VII. STATEMENT OF COSTS OF THE PROCEEDINGS AND RECOMMENDATIONS: The costs of these proceedings were as follows:

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|------------------------------------|-------|-----------|
| Administrative costs: | | |
| Grievance committee level (66,679) | ----- | \$ 150.00 |
| Grievance committee level (67,795) | ----- | 150.00 |
| Referee level costs: | | |
| (67,679) | ----- | 150.00 |
| (67,795) | ----- | 150.00 |

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| Court reporter costs: | |
| Grievance committee level (66,679) ----- | 1,019.04 |
| Grievance committee level (67,795) ----- | 641.90 |
| Photocopies ----- | 35.00 |
| <u>TOTAL:</u> ----- | \$2,295.94 |

I recommend that such costs be taxed against the respondent.

RENDERED this 16 day of June, 1986 at Fort Lauderdale,
Broward County, Florida.

Robert C. Abel, Jr.

ROBERT C. ABEL, JR.
Referee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing amended referee's report was furnished to David M. Barnovitz, bar counsel, The Florida Bar, 915 Middle River Drive, Suite 602, Fort Lauderdale, FL 33304, and to John R. Asbell, Esquire, attorney for respondent, 3174 East Tamiami Trail, Naples, FL 33962, on this 16th day of June, 1986.

Robert C. Abel, Jr.

ROBERT C. ABEL, JR.