

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,

Complainant,

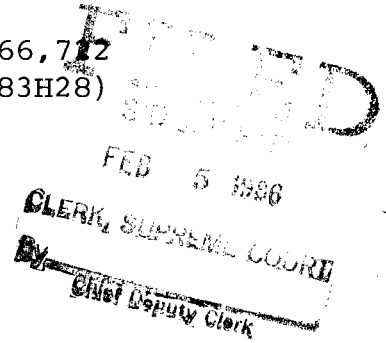
v.

PAUL T. MARKS,

Respondent,

CONFIDENTIAL

Case No. 66,712  
(TFB #13B83H28)



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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, hearing was held on 19 December 1985. The Pleadings, Notices, Motions, Transcripts and Exhibits, all of which are forwarded to the Supreme Court of Florida with this report, constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For the Florida Bar: David R. Ristoff

For the Respondent: Gerald W. Nelson

11. FINDINGS OF FACT AS TO EACH ITEM OF MISCONDUCT OF WHICH RESPONDENT IS CHARGED: After considering all the pleadings and evidence before me, pertinent portions of which are commented upon below by me, I find:

INTEGRATION RULE, Article XI, Rule 11.02 (3) (a):

The evidence clearly and convincingly shows that:

From 1980 thru 1982 Respondent was attorney for Angel Haya and Angel Haya's company, A. J. Electric. Angel Haya had never engaged in the importation or sale of contraband drugs before his involvement in the scheme involved herein and he had no substantial criminal record.

Angel Haya trusted Respondent as an attorney.

In early 1982 Mr. Haya delivered to Respondent at Respondent's request \$25,000.00 in cash for the purchase of a

small airplane with over-water capabilities. Respondent was a pilot but was not in the business of brokering the sale or the purchase of airplanes. Mr. Haya was contemplating expansion of his business into Algeria for which he would need an airplane. This expansion was never made.

Respondent introduced Mr. Haya to a Mr. Stinsen who was to buy the plane, fly it to a foreign country to pick up marijuana, and return to Florida where he would sell the marijuana for a profit and split the profits between the parties. It is not clear and convincing what Respondent's split would be. Respondent denies knowledge of the marijuana importation scheme, but Angel Haya and Mr. Green clearly testified that Respondent was present when the scheme was discussed and he participated in the discussions.

Respondent actively participated in the negotiations for the purchase of the airplane and was an integral part of the scheme.

The scheme was foiled by law enforcement officers when the plane loaded with marijuana and hashish landed in Pasco County, Florida, and was seized by law enforcement officials.

Violation of this Rule does not require conviction of a crime, so the negotiated nolo contendere plea entered by Respondent to the third degree felony charge that arose out of this matter is irrelevant.

The evidence is clear and convincing that Respondent knew he was bringing the parties together for the purpose of purchasing an airplane to import contraband drugs into Florida from outside the U. S. which would constitute his participation in a conspiracy to import contraband drugs. The extent of Respondent's involvement was not shown by clear and convincing evidence, i.e. was he the "kingpin of drug dealers in West Florida" as described by a newspaper when he was

arrested or was he merely an amateur dabbling in dope hoping for a quick profit?

Respondent's professed innocence is incredible. Respondent claims that he was merely helping out a couple of clients, and that he heard no talk of importing marijuana until late in its proceedings. Respondent was not an airplane broker, and this referee finds it incredible that any attorney in West Central Florida who is approached to facilitate the purchase of a small airplane with over-water capability when one of the purchasers is to supply all the money and the other purchaser is to supply the skills can honestly claim that he has no strong suspicions that a drug deal is contemplated. These circumstances alone lend credence and corroborate the other evidence that the details of the drug-importing scheme were discussed in the presence of Respondent and that he participated in these discussions.

INTEGRATION RULE X!, Rule 11.02 (3) (b):

Respondent was charged with trafficking in marijuana. This charge was reduced by a plea bargain to delivery of cannabis to which Respondent pled nolo contendere. This is undisputed.

The charge to which Respondent pled does not fit anyone's description of the facts, so it can only be assumed that some other considerations led the State Attorney to permit this plea. The evidence of these other considerations is not clear and convincing.

It is also undisputed that there was a large amount of marijuana involved in this scheme, that the scheme involved importing this marijuana into Florida from a foreign country, and that the scheme was discovered and prevented from fruition by the action of law enforcement agencies, not by the actions of Respondent. Aside from Respondent's protestations of innocence

all the pertinent evidence pointed to his deep involvement in the scheme. He may have pled to a third degree felony, but he was clearly and convincingly guilty of a second-degree felony carrying a minimum mandatory prison sentence.

CODE OF PROFESSIONAL RESPONSIBILITY, Rule DR-1-102

(A) (!) and (3):

Respondent pled nolo contendere to a charge of delivery of marijuana. This was undisputed.

CODE OF PROFESSIONAL RESPONSIBILITY, Rule DR-102 (A) (6):

It is clear and convincing that Respondent encouraged and persuaded his client Angel S. Haya to engage in illegal conduct by participating in this scheme by putting up the money to finance the purchase of the airplane and the operating expenses. Respondent had represented Mr. Haya for some time on many legitimate business transactions and it is clear and convincing that Mr. Haya had great faith and trust in Respondent as an attorney. Clearly, Respondent did not force or compel Mr. Haya to do anything illegal. Mr. Haya was an adult and must bear his own share of blame for his cupidity. However, it is equally clear that Respondent used his position as attorney for Mr. Haya to ignite and fan the fires of cupidity in Mr. Haya. If Respondent had not been an attorney, it is highly probable that he could not have convinced Mr. Haya to engage in this scheme.

It is bad enough for an attorney to engage in illegal conduct, but it is unforgiveable for an attorney to use his position as attorney to convince a long time client to engage in illegal conduct.

CODE OF PROFESSIONAL RESPONSIBILITY, Rule DR 7-102 (7):

It is clear and convincing that Respondent brought his long-time client Angel Haya into this scheme to import marijuana. All of the findings of this referee made above point to Respondent as the initiator of Angel Haya's introduction to

this scheme and as Angel Haya's mentor.

CODE OF PROFESSIONAL RESPONSIBILITY, Rule DR-7-102(A) (8):

See above findings.

111. RECOMMENDATIONS AS TO WHETHER OR NOT THE RESPONDENT SHOULD BE FOUND GUILTY:

I recommend that Respondent be found guilty as to each and every one of the Rules and violations set forth above.

IV. RECOMMENDATIONS AS TO DISCIPLINARY MEASURES TO BE APPLIED:

I recommend that Respondent be suspended for a period of 3 years and thereafter until he shall prove his rehabilitation as provided in Rule 11.10(4).

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD: After finding of guilt and prior to recommending discipline to be recommended pursuant to Rule 11.06 (9) (a) (4): I considered the following personal history and prior disciplinary record of the Respondent, to-wit:

Age: 41

Date admitted to Bar: Nov. 1969.

Prior disciplinary convictions and disciplinary measures imposed therein: None.

Other personal data:

Respondent is presently divorced with his three children, aged 5, 14, and 17, living with their mother and with Respondent current in his support payments.

Respondent is in sole practice at 2124 West Kennedy Boulevard, Tampa, Florida, sharing office space with another attorney. He has had no problems with the law since the incident described above. He is now on probation and apparently doing well. He paid costs of \$2,500.00 to the criminal courts for this crime.

At the time of this incident, Respondent's office was in Lutz, a very small town outside Tampa. Prior to that time

Respondent had moved his office several times within Tampa.

From personal observation of Respondent and from the evidence presented, it is the personal opinion of this referee that at the time of this incident Respondent was a moderately successful attorney with pressing financial problems who saw a chance to make some quick money by dabbling in drug smuggling. He was not an experienced drug smuggler, as this whole scheme demonstrates, e.g. The scheme was foiled in part because Respondent or one of his co-conspirators had approached an undercover police agent for help. Respondent appears remorseful now and sufficiently shaken to pose little risk to the community in the future. Certainly, drug smuggling by attorneys should not be condoned or pardoned by a light slap on the wrist. However, neither should Respondent's whole professional life be destroyed by disbarment because he succumbed once to the lure of easy illicit money.

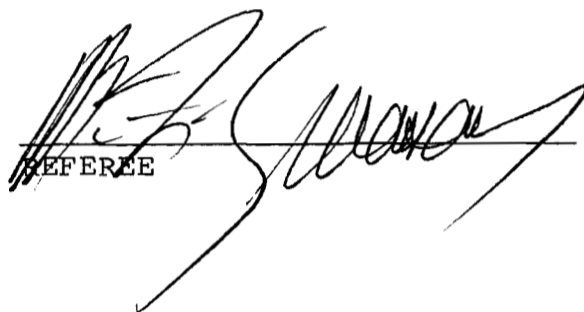
VI. STATEMENT OF COSTS AND MANNER IN WHICH COST SHOULD BE TAXED:

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

A. Grievance Committee Level Costs	
1. Administrative Costs	\$150.00
2. Transcript Costs	\$552.50
3. Bar Counsel/Branch Staff Counsel Travel Costs	\$262.00
B. Referee Level Costs	
1. Administrative Costs	\$150.00
2. Transcript Costs	\$793.60
3. Bar Counsel/Branch Staff Counsel Travel Costs	\$ 45.06
4. Audit costs pursuant to Rule 11.02 (4) (C)	\$204.00
C. Miscellaneous Costs	
1. Telephone Charges	\$ -0-
2. Staff Investigator expenses	\$ -0-
TOTAL ITEMIZED COSTS	<u>\$2,157.16</u>

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 31 day of JAN, 1986.

  
REFeree