

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

FILED
SID J. WHITE
JUL 11 1985
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

THE FLORIDA BAR,)
Complainant,) Supreme Court
vs.) Case No. 66,815
NORMAN S. PALLOT,)
Respondent.) The Florida Bar
Case No. 11J85M21

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS: Pursuant to the undersigned being duly appointed as Referee for the Supreme Court of Florida to conduct disciplinary proceedings as provided for by article XI of the Integration Rule of The Florida Bar, a final hearing was held on June 28, 1985. All of the pleadings, notices, motions, orders, transcripts and exhibits are forwarded with this report and the foregoing constitutes the record of this case.

The following attorneys appeared as counsel for the parties:

On Behalf of The Florida Bar: Patricia S. Etkin
On Behalf of the Respondent: pro se

On April 3, 1985, Respondent's Unconditional Guilty Plea and Consent Judgment for Discipline was filed which provided for a sixty-day suspension from the practice of law and payment of costs of the proceedings.

Complainant filed a Petition for Approval of Consent Judgment for Discipline which reflects the position of The Florida Bar, as approved by the Designated Reviewer of the Eleventh Judicial Circuit Grievance Committee "J", that Respondent's plea be accepted based upon the imposition of the following disciplinary terms:

a) suspension from the practice of law for a period of sixty (60) days.

b) taxation of costs of the proceedings assessed against Respondent, with execution to issue with interest at a rate of 12% to accrue on all costs not paid within thirty (30) days of entry of the Supreme Court's final

order of discipline, unless the time for payment is extended by the Board of Governors.

At the final hearing, Respondent confirmed to this Referee that he would accept the aforementioned disciplinary terms.

Having reviewed the record of these proceedings, I find that Respondent's plea and the recommendation of The Florida Bar as to terms of discipline are both fair to the Respondent and in the best interests of the public. Accordingly, Respondent's Unconditional Guilty Plea and Consent Judgment for Discipline and the terms of discipline recommended by The Florida Bar are accepted and hereby adopted as the recommendations of this Referee in this matter.

II. FINDINGS OF FACT: In his Unconditional Guilty Plea and Consent Judgment for Discipline, Respondent admits that the following facts are true and accurate:

a) In 1977 Respondent represented Franklin D. Stanley and his wife, Florence Stanley (hereinafter referred to as "clients" or "former clients") in the sale of their property to Richard J. Gerstein and Merle K. Gerstein (hereinafter referred to as "Gersteins").

b) In connection with the aforementioned representation, Respondent prepared a Deposit Receipt and Sale-Purchase Contract (hereinafter referred to as "contract") and a purchase money mortgage (hereinafter referred to as "mortgage").

c) A due-on-sale clause was included in the contract but inadvertently omitted from the mortgage.

d) Several years later, when the property was sold by the Gersteins, Respondent's clients learned for the first time that the due-on-sale clause had been omitted from the mortgage.

e) As a result of the omission of the due-on-sale clause, Respondent's clients are unable to require repayment of the mortgage from the proceeds of the subsequent sale of the property by the Gersteins.

f) Upon learning of their legal position, Respondent's clients retained counsel to represent them.

g) In 1984 Respondent received a letter from an attorney on behalf of his former clients threatening Respondent with legal action as a result of his failure to include the due-on-sale clause in the mortgage.

h) Upon receipt of the aforementioned letter and recognizing that he might be sued by his former clients, Respondent attempted to protect his legal position by inserting into a document prepared in 1977, entitled "Real Estate Closing Check-Off List", a notation reflecting that the clause pertaining to "acceleration of the note upon sale" was deleted at the clients' direction (hereinafter referred to as "notation").

i) Respondent's representation concerning deletion of the acceleration clause, as contained in the notation referred to above, is false.

j) In September 1984, Respondent's former clients filed a grievance with The Florida Bar.

k) In response to a request for his position, Respondent sent The Florida Bar correspondence representing that his client had advised him to omit the due-on-sale clause from the mortgage.

l) The representations to The Florida Bar, referred to above, were false.

m) At a hearing held on February 20, 1985, Respondent appeared before the Eleventh Judicial Circuit Grievance Committee "J" and testified, under oath, that his client had directed him to omit the due-on-sale clause from the mortgage.

n) Respondent's testimony before the grievance committee, referred to above, was false.

o) At the aforementioned grievance committee hearing, Respondent produced to the committee the original of the Real Estate Closing Check-Off List, referred to in Paragraph h above, and represented to the committee that the document, including the notation, was prepared in 1977 and prior to the closing.

p) By his actions described above, Respondent offered evidence to the grievance committee which he knew to be false in support of his false testimony concerning the omission of the due-on-sale clause from the mortgage.

III. RECOMMENDATION AS TO GUILT: In his Unconditional Guilty Plea and Consent Judgment for Discipline and as confirmed by his statements to this Referee at final hearing, Respondent admits that he engaged in the following course of conduct which was unethical:

misrepresenting the circumstances surrounding the preparation of documents and the omission of a due-on-sale clause, adding a notation to a document which was false in order to support his misrepresentation, falsely testifying under oath before a grievance committee concerning his actions and submitting to the grievance committee documentation he knew to be false in support of his false testimony.

Based upon Respondent's admissions, I recommend that Respondent be found guilty of violating Disciplinary Rules 1-102(A)(4) & (6) and 6-102 of the Code of Professional Responsibility and Rule 11.02(3)(a) of the Integration Rule of The Florida Bar.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

I accept Respondent's Unconditional Guilty Plea and Consent Judgment for Discipline and the recommendation of The Florida Bar

as terms of discipline. Accordingly, I recommend the imposition of the following disciplinary terms:

a) suspension from the practice of law for a period of sixty (60) days.

b) taxation of costs of the proceedings assessed against Respondent, with execution to issue with interest at a rate of 12% to accrue on all costs not paid within thirty (30) days of entry of the Supreme Court's final order of discipline, unless the time for payment is extended by the Board of Governors.

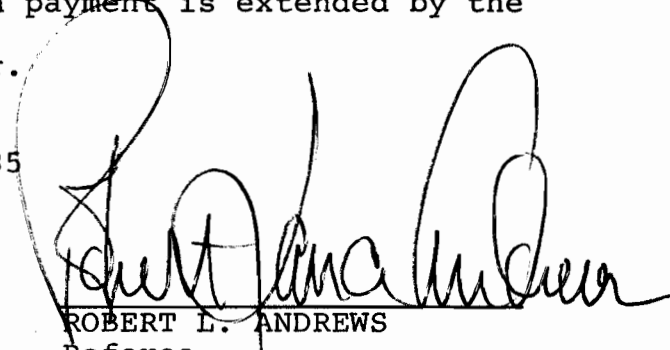
V. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED:

I find that the following were reasonably incurred by The Florida Bar as costs in these proceedings and should be assessed against Respondent:

	<u>Amount</u>
Administrative Costs	\$150.00
Grievance Committee	150.00
Referee Level	
Cost of Court Reporter	
Grievance hearing held February 20, 1985	60.00
Final hearing held June 28, 1985	<u>80.20</u>
TOTAL	\$440.20

It is recommended that the foregoing costs be assessed against Respondent. It is further recommended that execution issue with interest at a rate of twelve percent (12%) to accrue on all costs not paid within thirty (30) days of entry of the Supreme Court's final order, unless the time for such payment is extended by the Board of Governors of The Florida Bar.

Dated this 2nd day of July, 1985


ROBERT L. ANDREWS
Referee

Copies furnished to:
Patricia S. Etkin, Esq.
Norman S. Pallot, Esq.