

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

FILED  
JUL 13 1985  
CLERK, SUPREME COURT  
BY \_\_\_\_\_  
Chief Deputy Clerk

THE FLORIDA BAR,  
Complainant,  
v.  
THOMAS B. CALHOUN,  
Respondent.

CONFIDENTIAL

Case No. 66,842 ✓  
(TFB Nos. 02-82N56;  
02-82N63)

REPORT OF REFEREE

I. 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 May 7, 1985, The Florida Bar filed its Complaint against Respondent and its Request for Admissions. Respondent failed to answer either pleading and The Florida Bar filed its Motion to Deem Matters Admitted and Motion for Summary Judgment. The aforementioned pleadings, 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:

Regarding TFB Case No. 02-82N56, I find:

1. Respondent is, and at all times mentioned in this report was, a member of The Florida Bar subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

2. On or about December 1, 1976 H. Peter Stowell and Anne L. Stowell executed and delivered a promissory note and mortgage securing payment on real property to Michael Domanski and Karen S. Tenney.

3. Mr. Domanski and Ms. Tenney own and hold the note and mortgage referenced in paragraph 2, above.

4. Mr. and Ms. Stowell defaulted under the note and mortgage by failing to pay the amounts due on September 1, 1980 and October 1, 1980.

5. On or about October 1980, Mr. Domanski and Ms. Tenney, (hereinafter referred to as clients) retained Respondent to bring a legal action against the Stowells to recover the amount due on the principal of the note and mortgage.

6. The Respondent assured his clients that he would pursue their case according to their instructions.

7. In or about December, the clients instructed the Respondent, in writing, to pursue foreclosure proceedings on the property in question and to petition the court to order the mortgage payments held in the registry of the court.

8. The clients paid Respondent attorney fees and costs in the amount of \$400.

9. The payment of costs and attorneys fees to Respondent was conditioned upon the Respondent speedily and zealously pursuing the representation of his clients.

10. The clients advised Respondent that they expected him to file appropriate legal action by January 1981 and to foreclose on the note and mortgage by June of the same year.

11. By August, 1981 Respondent had not yet filed the necessary papers to institute foreclosure proceedings.

12. When questioned concerning his failure to file the necessary papers, Respondent informed his clients that he had been negotiating with the mortgagees through their attorney.

13. Respondent's clients had not instructed or authorized Respondent to negotiate a settlement of this matter and subsequently discharged the services of Respondent.

14. Respondent's clients subsequently learned that respondent had not been involved in negotiations with either the mortgagor or their counsel.

15. Respondent ultimately filed suit on behalf of his clients, but despite having all relevant facts at his disposal, the complaint was grossly inaccurate and included misrepresentations of such facts.

16. The clients retained substitute counsel who has completed the clients' legal action, at substantial additional expense to the clients.

Regarding TFB Case No. 02-82N63, I find:

1. On or about December 22, 1981 Respondent issued a check drawn on his trust account, payable to Florida Tractor Corporation in the amount of \$3,000. This check was returned from the bank with the notation "insufficient funds."

2. The Respondent instructed a representative of Florida Tractor Corporation to put the check through his bank a second time. Again, the check was returned because of insufficient funds in Respondent's trust account.

3. Respondent subsequently issued a cashier's check in the amount of \$3,000 to Mr. Bennett, a representation of Florida Tractor Corporation, on February 2, 1982.

4. On or about August 3, 1981, respondent represented the buyer (Mr. Tom Davis) in connection with the purchase of a business known as Capital Hardware.

5. During the course of the representation, respondent prepared an affidavit for the seller which indicated that there were no undisclosed, outstanding liabilities and/or liens concerning Capital Hardware.

6. Approximately \$20,000 in undisclosed liabilities and/or liens were outstanding and subsequently had to be paid by respondent's client, the buyer.

7. The respondent knew or should have known by reasonable diligence of the existence of the outstanding liabilities and/or liens.

8. Clark V. Pearson, Chief Auditor of The Florida Bar, examined the trust accounts and records of the Respondent for the period of time January 1, 1981 through February 28, 1982.

9. The trust records of Respondent that were produced were check stubs, bank statements, paychecks deposit slips and real estate closing statements.

10. No trust ledger cards were maintained, the required quarterly trust reconciliations had not been prepared or kept, and the trust bank account had not been reconciled on a regular basis.

11. In some instances the source and reason of trust proceeds was not kept, nor were the reasons for all disbursements noted as required by Florida Bar Integration Rule, article XI, Rule 11.02(4)(b).

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

I recommend that Respondent be found guilty of the following violations of the Code of Professional Responsibility:

In TFB Case no. 0282N56:

DR 1-102(A)(4) conduct involving dishonesty misrepresentation

DR 1-102(A)(5) conduct prejudicial to administration of justice

DR 1-102(A)(6) conduct that adversely reflects on attorney's fitness to practice law

DR 2-106(A) collection of a clearly excessive fee

DR 6-101(A)(3) neglect of a legal matter

DR 7-101(A)(3) conduct that is prejudicial or damaging to a client during the professional relationship

In TFB Case No. 02-82N63:

DR 1-102(A)(1) violation of a disciplinary rule

DR 1-102(A)(6) conduct that adversely reflects on  
attorney's fitness to practice law

DR 5-105(A) failure to decline employment when the exercise  
of his independent professional judgment is likely to be  
adversely affected by acceptance of proffered employment

DR 5-105(B) failure to discontinue multiple employment when  
the exercise of his independent professional judgment in  
behalf of a client will be adversely affected by his  
representation of another client.

DR 6-101(A)(1) handling a legal matter which he knows that  
he is incompetent to handle

Integration Rule, article XI, Rule 11.02(4)(b) failure to  
maintain all required trust accounting records

DR 9-102(A) failure to identify and preserve clients'  
funds

DR 9-102(B)(3) failure to maintain trust records

DR 9-102(B)(4) failure to promptly deliver the client  
funds, securities, or other properties in lawyers  
possession which the client is entitled to receive

Integration Rule, article XI, Rule 11.02(4) failure to  
retain and use funds for purpose for which they were  
entrusted

IV. Recommendation as to Disciplinary Measures to be Applied

I recommend that Respondent be disciplined by:

A. Payment of costs in these proceedings

B. Disbarment.

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: 44

Date admitted to Bar: June 10, 1968

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

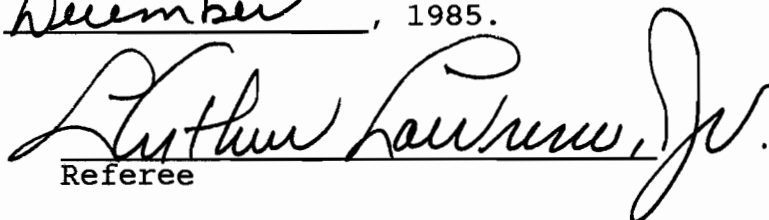
1. Administrative costs	\$150.00
2. Court reporter and transcripts	\$ 26.40
3. Investigator costs	\$ 17.50

B. Referee Level Costs

1. Administrative costs	<u>\$150.00</u>
Total	\$343.90

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 become final unless a waiver is granted by the Board of Governors of The Florida Bar.

Dated this 19<sup>th</sup> day of December, 1985.

  
Referee

Copies to:  
James N. Watson, Jr., Staff Counsel of The Florida Bar  
Thomas B. Calhoun, Respondent