

IN THE SUPREME COURT OF FLORIDA
BEFORE A REFEREE

FILED
SID J. WHITE
JAN 17 1986
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk
CONFIDENTIAL

THE FLORIDA BAR,
Complainant,

vs.

RUSSELL T. SICKMAN,
Respondent.

CASE NO. 66,949

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, a hearing was held on Thursday, December 12, 1985, in Chambers, in Room 400 of the Leon County Courthouse, Tallahassee, Leon County, Florida. The pleadings, notices, orders, transcript 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 appeared JAMES N. WATSON, JR.

For the Respondent appeared JOHN A. WEISS

II. Findings of fact as to each item of misconduct of which the Respondent is charged. After considering all the pleadings and evidence before me, pertinent portions of which are commented on below, I find as follows:

(A) That on November 14, 1983, Respondent was convicted of the crime of conspiracy to commit mail fraud in the United States District Court, Southern District of New York, Case No. 83Cr.0571 (Bar Ex. 4).

(B) That Respondent admits the following facts.

1. Respondent lent money to a friend to purchase a dwelling and did not disclose to his client, who was the seller, that Respondent was the source of the funds used to consummate the transaction. (Tr. final hrg., pp. 26-27, line 4).

2. In August, 1978, while traveling to a deposition with one of the purchasers of the dwelling, Allen Cohen, who had retained the Respondent to represent him in said deposition, Respondent learned that Cohen planned to perjure himself at the deposition. The deposition was being taken by attorneys for Royal-Globe Insurance Companies relating to the claims filed as a result of the destruction of the dwelling by fire. Respondent neither forbade his client from giving perjured testimony, nor advised opposing counsel of the false statements. (Tr. final hrg., pp. 31-34).

Further, Respondent forwarded the deposition to Mr. Cohen for his signature and acknowledgment with full knowledge that the transcript of the deposition contained false statements. (Tr., final hrg., p. 35).

3. In 1979, Respondent prepared and filed a proof of loss relating to an additional living expense claim with the Royal-Globe Insurance Companies knowing that the proof of loss was false. (Tr. final hrg., p. 35, lines 21-25).

(C) That Respondent plead guilty to the charge of conspiracy to commit mail fraud (Title 18, United States Code, Section 371) in the United States District Court for the Southern District of New York, and that said crime is a felony under federal law, but that under the laws of the State of Florida, as well as the State of New York, the equivalent crime is conspiracy to commit insurance fraud which is a misdemeanor. (Fla Statutes, Section 777.04(4)(d)).

III. Recommendations as to whether or not the Respondent should be found guilty. I recommend that the Respondent be found guilty and specifically that he be found guilty of violating the following Disciplinary Rules of the Code of Professional Responsibility, to-wit: DR 1-102(A)(4) and (6).

IV. Recommendation as to disciplinary measures to be applied. I recommend that the Respondent be suspended from the practice of law in Florida for a period of three (3) years, nunc pro tunc December, 1983, and thereafter until his civil rights have been restored and until he shall prove his rehabilitation as provided in Rule 11.10(4). I further recommend that Respondent be required to satisfactorily pass the ethics portion of The Florida Bar examination prior to the restoration of his privileges of membership in The Florida Bar.

V. Personal history and past disciplinary record. After finding Respondent guilty 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: 38

Date admitted to Bar in Florida: 1975

Prior disciplinary convictions and disciplinary measures imposed therein: None, other than court ordered suspension arising out of subject conviction in Case No. 83Cr.0571, United States District Court for the Southern District of New York.

Other personal data:

A. Respondent recognizes and has readily admitted that his actions constitute a serious breach of the Code of Responsibility of The Florida Bar, and has expressed remorse for his actions and readily accepts the fact that discipline is appropriate.


B. But for the subject offense, Respondent appears to have been a valuable member not only of the legal profession but also of his community.

C. Respondent has more than complied with the terms of his probation.

D. Respondent received no financial gain from his actions.

VI. Statement of costs and manner in which costs should be taxed. While it is apparent that costs have been incurred by The Florida Bar in this action, there was no evidence presented by The Florida Bar as to the costs incurred. Thus, I can make no recommendations regarding the amount of costs to be taxed.

DATED this 17th day of January, A.D., 1986.


WILLIAM L. GARY
Referee

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