

**FILED**

SID J. WHITE

DEC 15 1986

CLERK SUPREME COURT

By \_\_\_\_\_  
Deputy Clerk

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,	)	
Complainant,	)	<u>CONFIDENTIAL</u>
vs.	)	Supreme Court
ARTHUR NEWMAN,	)	Case No. 67,528
Respondent.	)	

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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, final hearings were held on January 23, 1986; March 20, 21 and 22, 1986; June 19 and 20, 1986; and July 26, 1986. 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: George dePozsgay  
Patricia S. Etkin

On Behalf of the Respondent: Joel Hirschhorn

II. SPECIFIC FINDINGS OF FACT AS TO EACH ITEM OF MISCONDUCT OF WHICH THE RESPONDENT IS CHARGED: After considering the transcripts, pleadings, and evidence before me, I find:

Findings as to Count I

1. During 1981, Respondent maintained a trust account at Florida National Bank of Miami, Miami, Florida, Account No. 2-33-791-2 (hereinafter "FNB trust account").

2. During 1981 and 1982, Respondent maintained a trust account at Southeast First National Bank of Miami, Miami, Florida, Account No. 18-190207 (hereinafter "Southeast trust account").

3. During 1982, Respondent maintained a trust account at First City Bank of Dade County, Coral Gables, Florida, Account No. 100960500 (hereinafter "First City trust account #1").

4. During 1983 and 1984, Respondent maintained a trust account at First City Bank of Dade County, Coral Gables, Florida, Account No. 10100960506 (hereinafter "First City trust account #2").

5. During 1983 and 1984, Respondent maintained a trust account at the Bank of Miami, Miami, Florida, Account No. 0126328001-9 (hereinafter "Miami trust account").

6. On March 19, 1984, Pedro J. Pizarro, The Florida Bar Staff Auditor, (hereinafter "Pizarro") completed an audit of Respondent's trust accounts for 1981 and 1982.

7. On September 14, 1984, Pizarro completed an audit of Respondent's trust accounts for 1983 through May 31, 1984.

8. The aforementioned audit covered all recorded trust account transactions occurring between January 1981 and May 31, 1984 (hereinafter "audit").

9. The audit revealed numerous trust accounting violations, as detailed below.

10. Respondent failed to preserve all required trust account records.

11. Respondent's trust account records contained unidentifiable deposits and withdrawals.

12. Respondent failed to clearly and expressly reflect the source and reason for all receipts and disbursements of trust funds.

13. Respondent commingled his funds with funds belonging to clients.

14. Respondent failed to maintain a file or ledger containing an accounting for each person from whom or for whom trust money was received.

15. Respondent failed to prepare and/or preserve quarterly trust account balance reconciliations.

Findings as to Count II

1. The audit reflected at least seventy-five (75) instances in which Respondent's trust account checks were issued against insufficient funds, thereby creating overdrafts in Respondent's trust accounts.
2. Due to outstanding checks which had not yet been presented to the banks for payment, not all of the aforementioned overdrafts are reflected in Respondent's trust account bank statements.
3. Respondent's trust account bank statements reflect at least fifteen (15) instances in which Respondent's trust accounts were in overdraft status, as detailed below.
4. Respondent's FNB trust account bank statements reflect five (5) instances of overdrafts in 1981 in amounts ranging between ONE HUNDRED SEVENTY TWO DOLLARS AND THREE CENTS (\$172.03) and SIXTEEN THOUSAND, THREE HUNDRED FORTY DOLLARS AND TWENTY-FIVE CENTS (\$16,340.25).
5. Respondent's Southeast trust account bank statements reflect at least six (6) instances of overdrafts in 1981 and 1982 in amounts ranging between TWO HUNDRED SIX DOLLARS AND EIGHTY-SEVEN CENTS (\$206.87) and FOUR THOUSAND NINE HUNDRED SEVENTEEN DOLLARS AND THIRTY-THREE CENTS (\$4,917.33).
6. Respondent's First City trust account #1 bank statements reflect two (2) overdrafts in 1982 in the amount of THREE THOUSAND EIGHT HUNDRED FIFTY-FIVE DOLLARS AND EIGHTY-SEVEN CENTS (\$3,855.87) and THREE THOUSAND THREE HUNDRED FOUR DOLLARS (\$3,304.00).
7. Respondent's First City trust account #2 March 1983 bank statement reflects an overdraft in the amount of THIRTY-THREE THOUSAND, SEVEN HUNDRED NINETY-SEVEN DOLLARS AND TWENTY-TWO CENTS (\$33,797.22).
8. Respondent's Miami trust account August 1983 bank statement reflects an overdraft in the amount of EIGHTY-FOUR THOUSAND, EIGHT HUNDRED FORTY-FOUR DOLLARS AND NINETY-ONE CENTS (\$84,844.91).
9. The audit reflected at least twenty-one (21) instances in which Respondent's trust account checks were dishonored by the bank, as detailed below.

10. Respondent's Southeast trust account bank statements reflect ten (10) instances in which Respondent's trust account checks were dishonored.

11. Respondent's First City trust account #1 bank statements reflect at least three (3) instances in which Respondent's trust account checks were dishonored.

12. Respondent's Miami trust account bank statements reflect at least eight (8) instances in which Respondent's trust account checks were dishonored.

13. The audit revealed instances in which Respondent's trust account liabilities exceeded trust account assets.

14. The audit revealed that Respondent utilized client's trust funds for the benefit of persons other than the particular client, including other clients and himself.

15. Respondent's actions of utilizing trust funds for the benefit of persons other than the particular client from whom the money was received constitute misappropriation of trust funds.

#### Findings as to Count III

1. During 1981, Respondent maintained a bank account at Florida National Bank of Miami, Miami, Florida, Account No. 0002337901 (hereinafter "FNB").

2. During 1981 and 1982, Respondent maintained a bank account at Southeast First National Bank of Miami, Miami, Florida, Account No. 18190025 (hereinafter "Southeast").

3. During 1982 Respondent maintained a bank account at First City Bank of Dade County, Coral Gables, Florida, Account No. 10100959106 (hereinafter "First City").

4. Between January 1981 and December 1982, Respondent issued or caused to have issued to the Clerk of the Court, Dade County, Florida, a minimum of fifteen (15) checks which were subsequently dishonored by the bank as detailed below.

5. On or about NOVEMBER 25, 1980, Respondent's Check No. 1047, drawn of FNB, was issued to the Clerk Circuit Court, in the amount of SIXTEEN DOLLARS (\$16.00).

6. Respondent's check, referred to above, was dishonored by the bank due to insufficient funds.

7. On or about JANUARY 19, 1981, Respondent's Check No. 1170, drawn of FNB, was issued to the Clerk Circuit Court, in the amount of FORTY-FIVE DOLLARS AND FIFTY CENTS (\$45.50).

8. Respondent's check, referred to above, was dishonored by the bank due to insufficient funds.

9. On or about JANUARY 19, 1981, Respondent's Check No. 1172, drawn of FNB, was issued to the Clerk Circuit Court, in the amount of FORTY-FIVE DOLLARS AND FIFTY CENTS (\$45.50).

10. Respondent's check, referred to above, was dishonored by the bank due to insufficient funds.

11. On or about JANUARY 23, 1981, Respondent's Check No. 1178, drawn of FNB, was issued to the Clerk Circuit Court, in the amount of FORTY-FIVE DOLLARS AND FIFTY CENTS (\$45.50).

12. Respondent's check, referred to above, was dishonored by the bank due to insufficient funds.

13. On or about JANUARY 30, 1981, Respondent's Check No. 1206, drawn of FNB, was issued to the Clerk Circuit Court, in the amount of TWENTY-FIVE DOLLARS (\$25.00).

14. Respondent's check, referred to above, was dishonored by the bank due to insufficient funds.

15. On or about APRIL 6, 1981, Respondent's Check No. 1392, drawn of FNB, was issued to the Clerk Circuit Court, in the amount of TWENTY DOLLARS (\$20.00).

16. Respondent's check, referred to above, was dishonored by the bank due to insufficient funds.

17. On or about APRIL 14, 1981, Respondent's Check No. 1399, drawn of FNB, was issued to the Clerk Circuit Court, in the amount of FORTY-FIVE DOLLARS AND FIFTY CENTS (\$45.50).

18. Respondent's check, referred to above, was dishonored by the bank due to insufficient funds.

19. On or about APRIL 15, 1981, Respondent's Check No. 1401, drawn of FNB, was issued to the Clerk Circuit Court, in the amount of FORTY-FIVE DOLLARS AND FIFTY CENTS (\$45.50).

20. Respondent's check, referred to above, was dishonored by the bank due to insufficient funds.

21. On or about MAY 1, 1981, Respondent's Check No. 1419, drawn of FNB, was issued to the Clerk Circuit Court, in the amount of FORTY-FIVE DOLLARS AND FIFTY CENTS (\$45.50).

22. Respondent's check, referred to above, was dishonored by the bank due to insufficient funds.

23. On or about DECEMBER 23, 1981, Respondent's Check No. 2058, drawn of Southeast, was issued to the Clerk Circuit Court, in the amount of SIXTY-ONE DOLLARS (\$61.00).

24. Respondent's check, referred to above, was dishonored by the bank due to insufficient funds.

25. On or about FEBRUARY 17, 1982, Respondent's Check No. 2174, drawn of Southeast, was issued to the Clerk Circuit Court, in the amount of SIXTY-ONE DOLLARS (\$61.00).

26. Respondent's check, referred to above, was dishonored by the bank due to insufficient funds.

27. On or about JUNE 8, 1982, Respondent's Check No. 2403, drawn of Southeast, was issued to the Clerk Circuit Court, in the amount of ONE HUNDRED EIGHTY-SEVEN DOLLARS (\$187.00).

28. Respondent's check, referred to above, was dishonored by the bank.

29. On or about AUGUST 3, 1982, Respondent's Check No. 153, drawn of First City, was issued to the Clerk Circuit Court, in the amount of SEVENTY-FOUR DOLLARS AND FIFTY CENTS (\$74.50).

30. Respondent's check, referred to above, was dishonored by the bank due to insufficient funds.

31. On or about SEPTEMBER 27, 1982, Respondent's Check No. 247, drawn of First City, was issued to the Clerk Circuit Court, in the amount of ONE HUNDRED FORTY-THREE DOLLARS (\$143.00).

32. Respondent's check, referred to above, was dishonored by the bank due to insufficient funds.

33. On or about DECEMBER 1, 1982, Respondent's Check No. 350, drawn of First City, was issued to the Clerk Circuit Court, in the amount of SEVENTY-TWO DOLLARS AND FIFTY CENTS (\$72.50).

34. At the time each of the above-referenced checks were issued, Respondent knew or should have known that there were insufficient funds in his bank account to cover the obligation.

Findings As To Count IV

1. During or about 1978, Maricela Garcia-Diaz (hereinafter "Diaz") retained Respondent to pursue a personal injury claim arising from an automobile accident.

2. The aforementioned claim was settled in or about August 1978.

3. In August 1978, Respondent received a check representing settlement proceeds in the amount of TEN THOUSAND DOLLARS (\$10,000) made payable to Diaz and Respondent (hereinafter "settlement check").

4. Respondent transmitted the settlement check to Diaz for endorsement.

5. After endorsing the settlement check, Diaz returned the check to Respondent for disbursement.

6. On or about August 8, 1978 Respondent deposited the aforementioned check into his trust account at Central National Bank of Miami, Account No. 310433-6.

7. From the proceeds of the settlement check, Respondent was authorized by Diaz to retain the funds necessary to pay her outstanding medical bills and remit any remaining balance to her.

8. Respondent retained approximately TWO THOUSAND DOLLARS (\$2,000) to pay Diaz's outstanding medical bills.

9. Despite requests from Diaz or on her behalf, Respondent failed to promptly pay Diaz's outstanding medical bills and remit the remaining balance to Diaz.

10. As a result of Respondent's failure to pay Diaz's outstanding medical bills, Jackson Memorial Hospital (hereinafter "hospital") filed a civil action against Diaz in December 1981 (hereinafter "civil action").

11. Although Respondent received notice of a pre-trial conference scheduled for January 5, 1982 on said civil action, Respondent failed to either appear at the pre-trial conference or request a continuance.

12. On January 5, 1982, as a result of Respondent's failure to appear at the pre-trial conference on behalf of Diaz, the Court entered a default against Diaz and a final judgment in favor of the

hospital for ONE THOUSAND, ONE HUNDRED FIVE DOLLARS AND FOUR CENTS (\$1,105.04), plus interest at a rate of 12% until the judgment was satisfied (hereinafter "final judgment").

13. Respondent failed to promptly satisfy the final judgment. In fact, Respondent did not satisfy the final judgment until February 1983, four and one-half (4 1/2) years after he was entrusted with the funds to pay Diaz's outstanding medical bills, and only after Diaz filed a complaint with The Florida Bar.

14. As a result of Respondent's failure to promptly satisfy the final judgment, Diaz's credit rating was adversely affected.

15. Respondent knew or should have known the adverse effect that his failure to promptly satisfy Diaz's obligation would have.

16. Respondent's actions constitute a willful failure to take prompt and proper action to protect his client's legal interests.

#### Findings as To Count V

1. Respondent failed to utilize the funds which were entrusted to him by Diaz (hereinafter "Diaz's trust funds) for the specific purpose of satisfying Diaz's outstanding hospital bill.

2. Respondent was aware of the hospital lien as reflected by his letter to the hospital dated September 22, 1978 confirming that he had withheld funds from the settlement to satisfy the lien.

3. Respondent utilized Diaz's trust funds for other unauthorized purposes.

4. By reason of the foregoing, Respondent misappropriated Diaz's trust funds.

#### Findings as To Count VI

1. At various periods of time between August 1978 and February 1983, Respondent was contacted by Diaz or others on her behalf to obtain information concerning the status of payment of the outstanding medical bills.

2. In response to the aforementioned inquiries, Respondent represented that he was taking care of the matter.

3. Respondent failed to provide complete and accurate information concerning Complainant's legal position.

4. On January 13, 1982, Respondent filed a motion to vacate the default in the civil action (hereinafter "motion to vacate").



5. In his motion to vacate, Respondent alleged that he had a meritorious defense in that the money had been paid.

6. The aforementioned representation was untrue in that at the time Respondent filed the motion to vacate, he knew that he had been entrusted with monies by Diaz for the purpose of satisfying her outstanding medical expenses and that he had willfully failed to make the payment to the hospital.

7. In his response to the complaint filed with The Florida Bar, dated February 16, 1983, (hereinafter "response") Respondent represented to The Florida Bar that he has been holding the funds to pay the hospital but forgot to make the payment.

8. The aforementioned representation is untrue in that at the time Respondent submitted his response, he had misappropriated Diaz's trust funds and had not, therefore, merely neglected to disburse the funds.

#### Findings As To Count VII

1. Respondent was retained to represent Joseph Mills (hereinafter "Mills") in a criminal matter.

2. Mills' wife, Nancee (hereinafter "Nancee Mills"), and Respondent reached an understanding that approximately TWO THOUSAND EIGHT HUNDRED DOLLARS (\$2,800) would be wire transferred to Respondent by Western Union to cover the cost of Respondent's attorney's fees and a bond for Mills.

3. Pursuant to his understanding with Nancee Mills, on or about May 13, 1982 Respondent received TWO THOUSAND SIX HUNDRED NINETY-FIVE DOLLARS AND SEVENTY-SIX CENTS (\$2,695.76) from Western Union, after deducting the cost of the wire transfer.

4. Respondent failed to deposit the aforementioned funds into his trust account and thereafter properly disburse the funds from his trust account for purposes of Mills' bond.

5. Respondent utilized the funds entrusted to him for Mills' bond for other unauthorized purposes.

#### Findings As To Count VIII

1. On or about September 8, 1982, Respondent issued his Check No. 2369, drawn on his account at Southeast First National Bank of Miami, made payable to Slatko Bail Bonds (hereinafter "Slatko") in

the amount of ONE THOUSAND DOLLARS (\$1,000) in connection with Mills' bond.

2. Respondent's check, referred to above, was dishonored by the bank.

3. At the time Respondent issued the dishonored check, Respondent had been entrusted with ONE THOUSAND DOLLARS (\$1,000) to be used in connection with the bond.

4. In December 1982, Respondent issued his Check No. 216, drawn on his trust account at First City Bank of Dade County, made payable to Slatko, in the amount of ONE THOUSAND DOLLARS (\$1,000) to redeem the dishonored check, referred to in Paragraph 108.

5. The aforementioned trust account check was not drawn on funds entrusted to Respondent by or on behalf of Mills and in fact represents use by Respondent of trust funds belonging to other clients.

6. Respondent's use of other clients' trust funds to pay the Mills' bond constitutes a misappropriation of clients' trust funds.

#### Findings As To Count IX

1. In his response, dated January 25, 1983, to The Florida Bar's inquiry concerning the circumstances surrounding the issuance of Respondent's dishonored check, Respondent produced to The Florida Bar a copy of a letter to Slatko, which purports to reflect an understanding that Slatko was to hold Respondent's check pending receipt of moneys from Mills for the bond and that Respondent had received money from Mills for the bond during or about December 1982.

2. The aforementioned response misrepresents the circumstances surrounding Respondent's receipt and handling of trust funds in that Respondent had been entrusted with funds for Mills' bond in May 1982 and had not received any additional funds from Mills as stated in his letter to Slatko referenced above.

### III. RECOMMENDATIONS AS TO WHETHER RESPONDENT SHOULD BE FOUND

GUILTY: I recommend that Respondent be found guilty of all the violations of the Code of Professional Responsibility and Integration Rule of The Florida Bar charged in the Bar's Complaint

and, specifically, that he be found guilty of violating the following:

1. As to Count I, I recommend that Respondent be found guilty of violating Disciplinary Rule 9-102(A) and 9-102(B)(3) of the Code of Professional Responsibility and article XI, Rule 11.02(4), Integration Rule of The Florida Bar.

2. As to Count II, I recommend that Respondent be found guilty of violating article XI, Rule 11.02(4) of the Integration Rule of The Florida Bar.

3. As to Count III, I recommend that Respondent be found guilty of violating Disciplinary Rule 1-102(A)(6) (conduct which adversely reflects on fitness to practice law) of the Code of Professional Responsibility and article XI, Rule 11.02(3)(a) of the Integration Rule of The Florida Bar.

4. As to Count IV, I recommend that Respondent be found guilty of violating Disciplinary Rules 6-101(A)(3) (neglect of a legal matter) and 9-102(B)(4) (failure to promptly pay or deliver to the client funds in the possession of the lawyer which the client is entitled to receive), and 7-101(A)(1) (intentional failure to seek the lawful objectives of his client) of the Code of Professional Responsibility.

5. As to Count V, I recommend that Respondent be found guilty of violating article XI, Rule 11.02(4), Integration Rule of The Florida Bar.

6. As to Count VI, I recommend that Respondent be found guilty of violating Disciplinary Rules 1-102(A)(4) (conduct involving fraud, dishonesty, deceit or misrepresentation) 1-102(A)(6) (conduct adversely reflecting on fitness to practice law) and 7-102(A)(5) (knowingly making a false statement of law or fact) of the Code of Professional Responsibility.

7. As to Count VII, I recommend that Respondent be found guilty of violating Disciplinary Rule 9-102(A) of the Code of Professional Responsibility (failing to preserve the identity of funds and property of a client) and article XI, Rule 11.02(4) of the Integration Rule of The Florida Bar.

8. As to Count VIII, I recommend that Respondent be found guilty of violating Disciplinary Rule 1-102(A)(6) of the Code of Professional Responsibility (conduct adverse to fitness to practice law) and article XI, Rules 11.02(3)(a) and 11.02(4) of the Integration Rule of The Florida Bar.

9. As to Count IX, I recommend that Respondent be found guilty of violating Disciplinary Rules 1-102(A)(4) (conduct involving fraud, dishonesty, deceit, or misrepresentation), and 1-102(A)(6) (conduct which adversely reflects on fitness to practice law) of the Code of Professional Responsibility.

IV. STATEMENT AS TO PAST DISCIPLINE: Respondent was privately reprimanded before the Board of Governor's in November 1979 and received a grievance committee private reprimand in 1970. The 1979 private reprimand involved Respondent's failure to promptly satisfy his clients' debt with funds entrusted to him by the clients. As a result a judgment was entered against his clients. I find, therefore, that the misconduct which resulted in a private reprimand in 1979 is similar in nature to the misconduct involved in Count IV of the Complaint which is the subject of the instant disciplinary proceedings (see Count IV).

V. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

The referee recommends that the respondent be disbarred and re-instated only upon payment of the costs incurred in this action and proof of rehabilitation.

This recommendation is based on the cumulative nature of the violations; the continuous denial (bordering on defiance) of wrongdoing; the different types of violations and the refusal of the respondent to take action to cure his methods of operation despite repeated warnings and ongoing investigations.

In mitigation, it is acknowledged that no client of the respondents has filed a complaint against the Florida Bar Client Security Fund for money taken by the respondent; the respondent has recently taken steps to remedy his past Trust Account procedures and the respondent has a fairly good record considering the length of time he has been practicing law.

Additionally, the respondent has a stable family life and does not drink to excess or use drugs.

However, in this case, the acts of the defendant outweigh any sympathy the referee may have for the respondent, who created the situations outlined in these findings and must be held responsible for them.

Respectfully submitted this 5th day of December, 1986.

  
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LEROY H. MOE  
Referee

VI. STATEMENT OF COSTS AND RECOMMENDATION AS TO THE MANNER IN WHICH

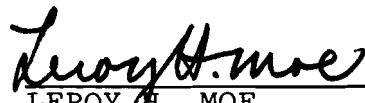
COSTS SHOULD BE TAXED: I find the following costs were reasonably incurred by The Florida Bar:

Administrative Costs [Integration Rule 11.06(9)(a)]:	
Grievance Level	\$ 150.00
Referee Level	150.00
Court Reporter:	
Grievance Committee Hearings	1,319.18
Hearings before Referee	2,989.86
Depositions/Sworn Statements	3,535.63
Witness Fees and Subpoena Service	341.30
Out of Town Witness Travel and Expenses: (Nancee Mills, Maricela Garcia Diaz and Richard Withers)	1,368.59
Audit and Investigative Costs:	23,681.49
Production of Bank Records (Southeast; Biscayne Bank	253.20
Photocopies, Postage	<u>204.70</u>
TOTAL	\$33,993.95

I find that The Florida Bar should be permitted to supplement these costs by affidavit when all costs are determined and that these supplemental costs may be included in the costs of the proceedings to be assessed against Respondent.

It is recommended that the costs of these proceedings, in the amount of Thirty Three Thousand Nine Hundred Ninety-three Dollars and Ninety-Five Cents (\$33,993.95), be taxed against Respondent. It is further recommended that execution issue with interest at the 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 in this cause, unless time for payment is extended by the Board of Governors of The Florida Bar.

Dated this 5<sup>th</sup> day of December, 1986 at Ft.  
Lauderdale, Broward County, Florida.

  
\_\_\_\_\_  
LEROY H. MOE  
Referee

Copies to: Patricia S. Etkin, Attorney for Complainant  
George dePozsgay, Attorney for Complainant  
Joel Hirschhorn, Attorney for Respondent

VI. STATEMENT OF COSTS AND RECOMMENDATION AS TO THE MANNER IN WHICH

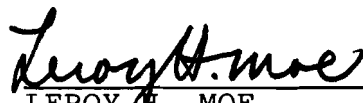
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Dated this 5<sup>th</sup> day of December, 1986 at Ft.  
Lauderdale, Broward County, Florida.

  
\_\_\_\_\_  
LEROY H. MOE  
Referee

Copies to: Patricia S. Etkin, Attorney for Complainant  
George dePozsgay, Attorney for Complainant  
Joel Hirschhorn, Attorney for Respondent