

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

The Florida Bar,
Complainant,

v.

Charles Gilbert Pierce,
Respondent.

Case No. 67,876
(13C83H29)
(13C84H68)
(13C84H88)

REPORT OF REFEREE

CLERK OF THE SUPREME COURT

By _____
Chief Deputy Clerk

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, hearing were held on March 25, 1986. The Pleadings, Notices, Motions, Orders, 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: Jan K. Wichrowski

For the Respondent: No Appearance

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 upon below, I find:

AS TO COUNT I

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

2. On August 31, 1981, Mrs. Pinault entered into a contract to purchase real estate, a private residence

located at 6810 Tuttle, Tampa, Florida, from Mrs. Marilee Ortiz.

3. Under the contract terms, the first mortgage was to be held by Stockton, Whately, Davin & Company.

4. A second mortgage, for approximately \$4,500.00, was to be held by seller, Mrs. Marilee Ortiz.

5. Ernest money of approximately \$1,221.00 was paid by Mrs. Pinault to Mrs. Marilee Ortiz.

6. On September 1, 1981, before closing, Mrs. Pinault moved into the residence at 6810 Tuttle, with the agreement that Mrs. Pinault would pay Mrs. Ortiz mortgage payments until closing.

7. On or about October 8, 1981, Mrs. Pinault retained Ms. Punto, Esquire, from the law firm of Pierce and Punto of Tampa, to represent her in the closing.

8. A fee of \$150.00 was agreed to and paid.

9. On or about November 25, 1981, Ms. Punto advised Mrs. Ortiz, the seller, that there was a lien of \$1,114.45 on the property.

10. After a few months, Ms. Punto informed Mrs. Pinault that Respondent was assuming responsibility for her (Mrs. Pinault's) case.

11. Respondent scheduled closings in January, and again in April 1982. Closing did not occur.

12. A check for \$823.05, to cover closing costs and several payments on the second mortgage, was given to Respondent on or about April 2, 1982. Respondent or his representative cashed this check.

13. On or about March 2, 1982, Respondent advised Mrs. Pinault to make no further payments on the first mortgage

and not to worry about the mortgage. Mrs. Pinault ceased making payments on the mortgage.

14. In a letter dated April 20, 1982, Mrs. Pinault was informed of an action of eviction against her for non-payments of rent.

15. Mrs. Pinault was served with notices of eviction on April 22, 1982.

16. On May 24, 1982, Marilee Ortiz sued Mrs. Pinault for possession of the residence at 6810 Tuttle, Tampa, alleging failure to pay rent.

17. In a July 22 answer and counterclaim, Mrs. Pinault, by and through Respondent, sued for specific performance or return of earnest money and back payment on mortgage made with respect to the property at 6810 Tuttle.

18. On September 9, 1982 Mrs. Pinault wrote Respondent a letter requesting the return of the money designated for closing.

19. In the letter of September 9, 1982, Mrs. Pinault informed Respondent he was discharged as her attorney.

20. On September 10, 1982, Mrs. Pinault demanded of Respondent that he show her the ledger where her closing money was recorded. Respondent refused to show her the ledger.

21. Respondent, when first asked, refused to return to Mrs. Pinault the money given to him for closing.

22. Respondent informed Mrs. Pinault that he was going to retain some or all of the \$823.05 as legal fees for work on her case.

23. At a hearing on Respondent's Motion to Withdraw as counsel, Mrs. Pinault complained of Respondent's refusal to return her money for closing.

24. Judge Spicola suggested to Respondent that he return the money for closing to Mrs. Pinault.

25. On the date of the hearing, all but \$412.50 of the closing moneys were returned to Mrs. Pinault.

26. The remainder of the \$823.05 was returned at a later date.

27. Respondent deposited moneys given to him for closing costs and/or balance due seller on closing in his attorney account.

28. Mrs. Pinault has not recovered her payments on the mortgage.

29. By reason of the foregoing, Respondent has violated the following Disciplinary Rules of The Florida Bar's Code of Professional Responsibility: 7-101(A)(1) for failing to seek the lawful objectives of his client through reasonable available means permitted by law; 9-102(A) for failure to keep all funds paid to a lawyer or his firm in one or more identifiable bank or savings and loan account; 9-102(B)(3) for failing to maintain complete records of all funds...of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them; 9-102(B)(4) for failing to promptly pay or deliver to the client as requested by the client funds...in the possession of the client which the client which the client is entitled to receive.

AS TO COUNT II

30. Complainant realleges all matters set forth in Paragraph One of Count I.

31. On February 18, 1983, Mrs. Jean Brodegard hired Respondent to initiate foreclosure proceedings on a residence at 1405 West Humphrey Street, Tampa, Florida. He was paid \$250.00.

32. Mrs. Brodegard held the first mortgage on the aforesaid property, and pursuant to the contract for sale was to receive \$265.00 per month for 18 years beginning in 1981.

33. By letter dated March 11, 1983, Respondent advised Mrs. Brodegard that he had received the title search and that suit would be filed within one week.

34. On May 16, 1983, Mrs. Brodegard paid Respondent an additional \$252.00.

35. Respondent failed to return numerous calls from Mrs. Brodegard regarding the foreclosure.

36. In November, 1983, Mrs. Brodegard contacted the courthouse and learned the papers for foreclosure had been filed in November 1983, but that no further work had been done.

37. In a letter dated January 18, 1984 Respondent indicates that a Motion for Final Judgement and Final Judgement previously submitted were returned, with notations that there was insufficient proof of diligent search, an original agreement for deed was needed, and stating that the action should be for foreclosure. A copy of this letter was sent to the complainant.

38. The foreclosure action had not been completed as of July 16, 1984.

39. The property on which foreclosure was sought had been abandoned and subject to vandalism.

40. Mrs. Brodegard has been compelled to hire another attorney to represent her in the foreclosure action.

41. By reason of the foregoing, Respondent has violated the following Disciplinary Rules of The Florida Bar's Code of Professional Responsibility: 6-101(A)(3) for neglecting a legal matter entrusted to him; 7-101(A)(1) for failing to seek the lawful objectives of his client through reasonable means; 7-101(A)(3) for prejudicing or damaging his client during the course of a professional relationship.

AS TO COUNT III

42. Complainant realleges all matters set forth in paragraph One in Count I.

43. Respondent maintained a trust account at Flagship Bank of Tampa under the name of "Law Offices-Pierce & Punto, P.A."

44. The bank statements and deposit slips in this account did not contain the correct trust account designation, although the checks did.

45. The account, #169-477-4, was opened on October 30, 1979 and closed in October, 1982 after the remaining balance of \$565.57 was garnished by the Internal Revenue Service on October 5, 1982.

46. The funds garnished included \$500.00 held in trust for William Freytog, Jr. The remaining \$65.57 belonged to Mr. Pierce. A receipt signed by William Freytog, Jr. indicates that the \$500.00 was returned to him in cash on October 28, 1982.

47. Although some bank reconciliations had been prepared for trust account #169-477-4, they did not include all reconciling items. Further, the required quarterly trust account balance reconciliations had not been prepared.

48. A second trust account was maintained by the Respondent at Flagship Bank of Tampa under the name of C. Gilbert Pierce, P.A. This account was opened on May 24, 1982, #114-740-4, and was still in use as of April 10, 1984.

49. On October 1, 1982, the bank charged #114-740-4 \$2,513.14, which was the entire balance in the account on that date, for a levy from the IRS. On October 29, 1982 the bank made a service charge of \$4.10, creating an overdraft in this amount. The overdraft was covered on November 16, 1982.

50. The funds garnished in #114-740-4 by the Internal Revenue Service included \$2,500.00 held in trust for Tom Thunderburk. The other \$13.41 belonged to Respondent. Mr. Thunderburk was reimbursed for the funds a few days after the garnishment.

51. The required quarterly trust accounts balance reconciliation had not been prepared in account #114-740-4.

52. In 1982, Respondent paid \$115.00 from this second trust account to Zenaida Johnson for the partial return of a fee. This caused \$115.00 shortage in the Respondent's second trust account.

53. Respondent also maintained a regular non-trust account at Flagship Bank of Tampa, #114-726-9, to which he occasionally deposited and disbursed advances for costs received from clients.

54. Although only partial records were available for audit, the record from this regular account from April through November, 1982 showed non-sufficient funds and overdrafts. Check number 157 for \$83.00 was paid by the bank against non-sufficient funds and the bank charged the account \$12.00. The following check numbers, 242, 258, 271, 272, 273, 277, 279, 280, and 284, for the amounts ranging from \$14.00 to \$449.66 were returned for non-sufficient funds. The amount in overdraft included monies held in trust for the costs of the Respondent's clients.

55. The sum of \$590.86, the entire remaining balance as of September 30, 1982, was charged to the account on October 1, 1982 for a levy from the Internal Revenue Service.

56. Four overdrafts of \$12.00, \$42.43, \$4.43, and \$45.99 were reflected in October of 1982.

57. By reason of the foregoing, Respondent has violated the following rules of the Integration Rule, Article XI of The Florida Bar, Rule 11.02(4) for using trust funds for purposes other than the specific purpose for which they are entrusted to the attorney; Rule 11.02(4)(c) and Bylaw Section 11.02(4)(c), paragraph 4(a) for failing to prepare and/or preserve for six years quarterly trust account balance reconciliations; Rule 11.02(4)(a) and Bylaw Section 11.02(4)(c), paragraph 2(a) for not clearly labelling all trust accounts; and the following Rules of the Disciplinary Code of Professional Responsibility: 9-102(A) for commingling trust funds with lawyer funds in a regular trust account not labelled as a trust account.

III. Recommendations as to whether or not the Respondent

should be found guilty : As to each count of the complaint I make the following recommendations as to guilt or innocence:

AS TO COUNT I

I recommend that the Respondent be found guilty and specifically that he be found guilty of violating the following Integration Rules of The Florida Bar and/or Disciplinary Rules of the Code of Professional Responsibility, to wit:

Respondent has violated 7-101(A)(1) for failing to seek the lawful objectives of his client through reasonable available means permitted by law; 9-102(A) for failure to keep all funds paid to a lawyer or his firm in one or more indentifiable bank or savings and loan accounts; 9-102(A)(3) for failing to maintain complete records of all funds...of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them; 9-102(A)(4) for failing to promptly pay or deliver to the client as requested by the client funds...in the possession of the client which the client is entitled to receive.

AS TO COUNT II

I recommend that the Respondent be found guilty and specifically that he be found guilty of violating the following Integration Rules of The Florida Bar and/or Disciplinary Rules of the Code of Professional Responsibility, to wit:

Respondent has violated 6-101(A)(3) for neglecting a legal matter entrusted to him; 7-101(A)(1) for

failing to seek the lawful objectives of his client through reasonable available means, and 7-101(A)(3) for prejudicing or damaging his client during the course of a professional relationship.

AS TO COUNT III

I recommend that the Respondent be found guilty and specifically that he be found guilty of violating the following Integration Rules of The Florida Bar and/or Disciplinary Rules of the Code of Professional Responsibility, to wit:

Respondent has violated Integration Rules 11.02(4) for using trust funds for purposes other than the specific purpose for which they are entrusted to the attorney; Rule 11.02(4)(c) and Bylaw Section 11.02(4)9C), paragraph 4(a) for failing to prepare and/or preserve for six years quarterly trust account balance reconciliations; Rule 11.02(4)(a) and Bylaw Section 11.02(4)(c), paragraph 2(a) for not clearly labelling all trust accounts; and Disciplinary Rule 9-102(A) for commingling trust funds with lawyer's funds in a regular trust account not labelled as a trust account.

IV. Recommendation as to Disciplinary measures to be

applied : I recommend that the Respondent be disbarred from the practice of law in Florida. This Referee is particularly concerned that although the Respondent had notice of this disciplinary proceeding at least at the grievance committee stage and has chosen to ignore his

responsibilities in this matter. Clearly, nothing less than disbarment is appropriate.

V. Personal History and Past Disciplinary Record : After a finding of 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: 48

Date Admitted to Bar: November 15, 1965

Prior Disciplinary convictions and Disciplinary measures imposed therein: None

Other Personal Data: No other personal data was available due to Respondent's failure to appear at any grievance proceedings.

VI. Statement and Costs and manner in which costs should be taxed : I find the following costs were reasonably incurred by The Florida Bar.

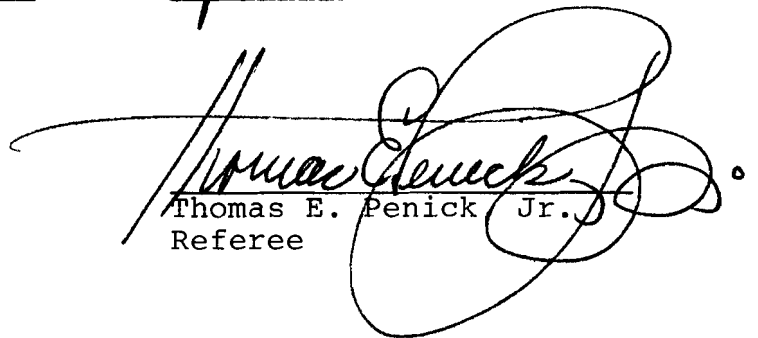
A.	Grievance Committee Level Costs	
1.	Administrative Costs	\$150.00
2.	Transcript Costs	\$445.23
B.	Referee Level Costs	
1.	Administrative Costs	\$150.00
2.	Transcript Costs	\$129.68
3.	Bar Counsel/Branch Staff Counsel Travel Costs	\$18.94
C.	Miscellaneous Costs	
1.	Staff Investigator Expenses	\$28.50
2.	Speedy Typing Service	\$6.00

TOTAL ITEMIZED COSTS: \$928.35

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 judgement in this case becomes final unless a waiver is granted by The Board of Governors of The Florida Bar.

Dated this 29th day of April, 1986.


Thomas E. Penick Jr.
Referee

Copies to:

Bar Counsel
Counsel for Respondent
Staff Counsel, The Florida Bar, Tallahassee, Florida
32301