

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

PUBLIC

Complainant,

vs.

CASE NO. 68,198

CASE NO. 68,512

STANLEY B. GELMAN,

Respondent.



AUG 23 1986

REPORT OF REFEREE

CLERK, SUPREME COURT OF FLORIDA
By _____
Deputy Clerk

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as Referee to conduct discovery proceedings herein according to Article XI of the Integration Rule of The Florida Bar, hearings were held on July 17, 1986 and July 23, 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: James N. Watson, Jr., Esquire

For the Respondent : Stanley B. Gelman, Esquire,
pro se

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 by me, I find:

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Respondent represented a client, Walter Williams, who entered into a handwritten option agreement with Harold Hart to purchase one-fourth of Hart Enterprises, Inc., the option to be exercised not later than June 25, 1983 (BAR EX 1). On June 24, 1983, Respondent prepared and hand delivered a letter to Hart on behalf of Williams to exercise the option to purchase one-third of Hart Enterprises, Inc. (BAR EX 2). The hand delivery was by slipping the letter under the door of Hart's residence (TR p92). Hart refused to allow the option to be exercised, and Respondent filed suit on behalf of Williams to enforce the agreement. No

exhibits were attached to the Complaint, although required by the Rules. David R. Lewis appeared as attorney for Hart and filed a Motion to Dismiss for failure to attach copies. At a hearing before the Circuit Court, Respondent exhibited a copy of the letter purporting to exercise the option to Attorney Lewis, but stated that it was his only copy and he would have to make a copy for Lewis. Lewis observed that the letter purported to exercise the option to purchase one-third. When Respondent finally filed with the Court a copy of the option agreement and the letter exercising the option, the copy had been altered to substitute one-fourth for one-third. (BAR EX 3). Respondent did not notify the Court that the copy of the letter had been altered or that it was not a true copy of the original furnished to Hart. At the trial Respondent stated that it was an administrative error in his office for the letter to have one-third rather than one-fourth, and that he did not know of the error until the lawsuit brought it to his attention. I find that the timing was critical because a bankruptcy action was instituted on behalf of Schuman Tire Company, wherein the bankruptcy court voided a transfer of assets from Schuman Tire Company to Hart Enterprises, Inc.

As to Count I
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Respondent represented Barnett Banks of Florida, Inc. Leo Myers, Esquire represented State Wide Collection Corporation, a subsidiary of Barnett Banks of Florida, Inc. Respondent attempted to represent Mr. Louis R. Perfetto in a suit brought by State Wide and, in fact, filed a Motion to Quash a Subpoena Duces Tecum for deposition on behalf of Perfetto (BAR EX 3). Respondent appeared on behalf of Perfetto in a deposition taken by State Wide. Myers made Respondent aware of a conflict of interest by letter dated December 9, 1982 (BAR EX 2). Respondent continued to represent clients against State Wide. In 1984, a member of Respondent's firm, J. Thomas McKeel, represented one James C. Rohman against State Wide and filed a Motion to Dismiss on his behalf (BAR EX 5). Later, Mr. McKeel filed a Motion to Withdraw when he became aware of the conflict (BAR EX 7). Notwithstanding his having been advised of the conflict, Respondent continued to represent clients against State Wide. A month after it was pointed out to him that his partner represented Rohman, Respondent wrote a letter and sent a proposed Stipulation on behalf of Rohman attempting to resolve the lawsuit (BAR EX 6).

As to Count II
Case No. 68,512

On February 6, 1970, a Judgment Lien in the amount of \$287.49 was recorded against Helen Sebra. In 1973, Respondent represented Gateway Chemicals of Jacksonville in purchasing Sebra's property. At a closing held on April 26, 1973, he agreed to retain \$345.81 in his trust account to satisfy the Judgment Lien (BAR EX 1). Respondent failed to satisfy the Judgment Lien until 1986. Respondent cannot locate any records of his trust account, and stated that he had no effective tickler system on his trust account during the time frame in question (TR p17). Sebra learned in 1985 that the Judgment was still outstanding and contacted her real estate agent to find out what was wrong. Respondent testified that the title company waived the Judgment, but, despite this he did not refund Sebra's money (TR p12). Respondent admitted that in 1983 he received a letter from Gregory J. Darby, Esquire, bringing to his attention the matter of the Judgment (TR p13). Respondent testified that he was going through a domestic breakup and that was the reason he did not pay the money off when it was brought to his attention in 1983, and that he took his personal funds and paid the Judgment off in 1986 (TR p20,25). His sole explanation of his inability to account for the trust funds was that a partner, at the time, was a CPA and handled all the trust arrangements (TR p17).

III. Recommendations as to whether or not the Respondent should be found guilty:

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I recommend 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: DR 1-102(A)(4), By engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. DR 1-102(A)(5) and (6), By engaging in conduct prejudicial to the administration of justice, and which adversely reflects on his fitness to practice law. DR 7-102(A)(3), (A)(5), (A)(6), and (A)(8), Concealing or knowingly failing to disclose that which he is required by law to reveal, knowingly making a false statement of law or fact, participating in the creation of evidence when he knows the evidence is false, and by knowingly engaging in other conduct contrary to a disciplinary rule.

As to Count I
Case No. 68,512

I recommend 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: DR 5-105(A), (C) and (D), requiring that he shall decline employment if the exercise of his independent professional judgment will, or is likely to be, adversely affected thereby; not making full disclosure of the possible effect of multiple representation on the exercise of his professional judgment on behalf of each client; and by failing to decline employment or withdrawing from employment and allowing a member of his firm to accept employment prohibited by this disciplinary rule.

As to Count II
Case No. 68,512

I recommend 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: DR 1-102(A)(4), engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; DR 6-101(A)(3), neglecting a legal matter entrusted to him; DR 9-102(B)(3), failing to maintain complete record of trust funds and rendering of appropriate accountings to his client; DR 9-102(B)(4), failing to promptly pay or deliver to the client the funds held in trust; Integration Rule 11.02(4), failing to apply monies held in trust for the purpose specified and failing to maintain appropriate records of trust accounts.

- IV. Recommendation as to Disciplinary measures to be applied: I recommend that the Respondent be suspended from the practice of law for a period of not less than six months and thereafter until he shall have proved his rehabilitation as provided in Rule 11.10(4). Proof of rehabilitation is recommended to include successfully taking and passing the Ethics portion of The Florida Bar exam.
- V. Personal History and Past Disciplinary Record: After 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: 44
Date admitted to Bar: 1967
Prior disciplinary convictions and disciplinary measures imposed therein: The Respondent was disciplined on two previous occasions by The Florida Bar by administration of private reprimands: in 1981 in Case Number 04B78T05 and in 1984 in Case Number 04A83N32.
Other personal data: The Respondent has maintained the practice of law in the Jacksonville, Florida area since admission to the Bar.

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

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A. Grievance Committee Level Costs

Administrative Costs	\$ 150.00
Bar Counsel Travel	
Court Reporter	
04A84N40	222.00
Long Distance Telephone	

B. Referee Level Costs

Administrative Costs	150.00
Bar Counsel Travel	125.00

C. Court Reporter's Costs

Transcript	<u> ** </u>
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TOTAL ITEMIZED COSTS: \$ 645.00

**It is apparent that other costs have or may be incurred, including transcript costs not yet determined. 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 judgment in this case becomes final unless a waiver is granted by the Board of Governors of The Florida Bar.

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A. Grievance Committee Level Costs

Administrative Costs	\$ 150.00
Bar Counsel Travel	
11-21-85 (1/3 cost)	70.26
Court Reporter	
04A85N19 (1/3 cost)	159.39
04A86N06 (1/3 cost)	159.39
Long Distance Telephone	

B. Referee Level Costs

Administrative Costs	150.00
Bar Counsel Travel	125.00
Court Reporter	**

TOTAL ITEMIZED COSTS: \$ 813.95

**It is apparent that other costs have or may be incurred, including transcript costs not yet determined. 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 judgment in this case becomes final unless a waiver is granted by the Board of Governors of The Florida Bar.

DATED this 18th day of August, 1986.



REFEREE

Copies to:

James N. Watson, Jr., Esquire, Bar Counsel
Stanley B. Gelman, Esquire, in proper person
Staff Counsel, The Florida Bar, Tallahassee, FL 32301