IN THE SUPREME COURT OF FLORIDA
BEFORE A REFEREE

THE FLORIDA BAR,

Complainant, Supreme Court Case No. 68,250

v.

KIMBERLY V. BARENZ,

Respondent.
_____/

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

Pursuant to the undersigned being duly appointed as the referee to conduct disciplinary proceedings herein according to Fla. Bar Integr. Rule, article XI, a final hearing was held on June 10 and 11, 1986. The pleadings, notices, motions, orders, transcripts and exhibits, all of which are forwarded to the Supreme Court with this report, constitute the entire record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar - David M. Barnovitz, Esquire

For the respondent - Barry G. Roderman, Esquire

and Patricia Ann Rahl, Esquire

II. FINDINGS OF FACT AS TO EACH ITEM OF MISCONDUCT OF WHICH THE RESPONDENT IS CHARGED:

After considering all of the pleadings and evidence before me, I find as follows:

A. With respect to each and every count I find that respondent is and at all times hereinafter mentioned, was, a member of The Florida Bar, subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

With respect to counts I and II of the bar's complaint, I find:

B. On October 20, 1982 respondent, accepting a $500.00 retainer, agreed to represent one Judy Walker Mead, (hereinafter called "Mead") in connection with an action to recover damages for the alleged wrongful taking by third parties of certain personal property owned by Mead.

C. Respondent thereafter failed to take any action on behalf of

Mead and failed and refused to respond to numerous telephone and written inquiries by Mead directed to respondent whereby Mead attempted to ascertain the status of her case.

D. In or about November, 1982, Mead entrusted to respondent a check in the sum of $307.00 received by Mead from one of the potential defendants in the action contemplated by Mead and for which Mead retained respondent's services.

E. Respondent received such $307.00 check but failed to take any action regarding it, maintaining such check in Mead's file.

With respect to count III of the bar's complaint, I find:

F. Upon inquiry by the grievance committee considering the complaint filed with The Florida Bar by Mead, respondent wrote a letter dated September 20, 1985 to the investigating member of the grievance committee in which she represented as follows:

> I have returned the file to Ms. Mead, after having retrieved from my office and the office of another attorney with whom I was associating. Also, to avoid any ill feelings, I returned the retainer money as well.

G. At a grievance committee hearing conducted on December 11, 1985, respondent testified before the grievance committee, under oath, that although she had duly mailed the Mead file and retainer refund to Mead as expressed in her September 20, 1985 letter, the mailing had been returned to respondent by the postal authorities and such return mailing was in respondent's possession maintained by her at her residence.

H. The uncontroverted testimony established that the conversion of Mead's personal property occurred on December 16, 1981.

I. In her complaint to The Florida Bar Mead expressly recited her concern that her file be returned to her so that she might pursue her claim prior to the expiration of the statute of limitations.

J. A copy of Mead's complaint to The Florida Bar was furnished to respondent and received by the respondent.

K. Despite the express concern of her client that the statute of limitations would run thereby barring her claim, respondent failed and refused to turn over such file until December 17, 1985 or December 18, 1985 after being served with a grievance committee subpoena duces tecum directing the production of such file.

L. In truth and in fact, respondent lied to the investigating member of the grievance committee in her letter of September 20, 1985 in

that respondent had not mailed the subject file and retainer refund to Mead prior to such September 20, 1985 letter.

M. Respondent lied under oath to the grievance committee on December 11, 1985 by averring that she had, in fact, mailed the subject file and retainer refund as expressed in her September 20, 1985 letter and that the mailing had been returned to her.

N. In truth and in fact, respondent never mailed the subject file and refund check to Mead.

O. On December 13, 1985, in an attempt to buttress her false testimony to the grievance committee, respondent pre-dated a personal check to September, 1985, prepared a handwritten enclosure letter addressed to Mead which she also pre-dated to September, 1985 and placed such pre-dated check and pre-dated letter in Mead's file.

P. Respondent then, on December 13, 1985, inserted Mead's file, together with the pre-dated check and pre-dated handwritten letter in a manilla envelope and using a pencil, addressed such envelope to herself, placed the requisite postage thereon and mailed the envelope.

Q. Upon receiving the manilla envelope pencil-addressed to herself, respondent erased the penciled address and substituted in place and stead thereof, using a black, felt, marker Mead's address and respondent's return address with a notation "return to sender".

With respect to count IV of the bar's complaint, I find:

R. In or about the spring of 1983 respondent undertook representation of one Eric Rad (hereinafter called "Rad") in connection with an exchange of real property between Rad and one Anne M. Loeffler (hereinafter called "Loeffler").

S. At the time of her representation of Rad, respondent was an attorney-agent for Chicago Title Insurance Company (hereinafter called "Chicago") and undertook, in consideration of the payment of the premiums therefor by Rad and Loeffler, the responsibility of providing title insurance for the parcels to be acquired by Rad and Loeffler.

T. On or about May 17, 1983 respondent issued a Chicago commitment for title insurance to Rad.

U. The Chicago commitment issued by respondent set forth as exceptions to title, two (2) certain mortgages held by Robert Silber,

a/k/a Robert Silbur and Edward Kay (hereinafter called "Silber and Kay").

V. In fact, the two (2) Silber and Kay mortgages hereinabove referred to were duly recorded and constituted liens affecting title to the real property owned by Loeffler to be acquired by Rad pursuant to their real property exchange agreement.

W. On June 24, 1983 respondent attended the title closing whereat Rad acquired title to the Loeffler realty and received at such closing, on behalf of Rad, various instruments required to be recorded, including, inter alia, the deed from Loeffler to Rad and a purchase money mortgage given by Rad to Loeffler.

X. There was also entrusted to respondent at the June 24, 1983 closing the sum of $2,078.50 for the specific purpose of recording various closing documents and paying for documentary stamps and intangible tax required to be paid upon the recording of such instruments.

Y. There was also entrusted to respondent at the June 24, 1983 closing $1,540.00 for the express purpose of paying the premiums for the title insurance purchased by Rad and Loeffler.

Z. Respondent did not record the instruments entrusted to her for recording at the June 24, 1983 closing until March 5, 1985.

AA. Respondent did not maintain the monies entrusted to her at the June 24, 1983 closing for the purpose of recording the various closing instruments and paying the documentary stamps and intangible tax, as aforesaid, in trust through March 5, 1985 and applied such monies to purposes other than those for which the monies were entrusted to her.

BB. Despite having received full payment for the title insurance policy which respondent agreed to provide to Rad, respondent did not issue such policy until March 6, 1985.

CC. As an attorney-agent for Chicago respondent was obligated to remit to Chicago a portion of each and every premium collected by respondent in connection with the issuance by respondent of Chicago title insurance policies.

DD. Respondent did not and has not remitted any portion of the title insurance premiums received by her in connection with the closing aforesaid to Chicago.

EE. Respondent has failed to maintain that portion of the title insurance premiums collected by her, as aforesaid, belonging to Chicago, in trust and has appropriated all such premiums to her own use and purposes.

With respect to count IV of the bar's complaint, I find:

FF. Respondent's client, Rad, at no time agreed to take title to the premises he was to acquire from Loeffler subject to the two (2) Silber/Kay mortgages hereinabove referred to in paragraphs 18 and 19 of this complaint which two (2) mortgages were to be eliminated as liens affecting title to the subject premises.

GG. Respondent did not secure satisfactions of the two (2) Silber/Kay mortgages and did not provide for the elimination of such mortgages as liens against the subject premises which mortgages continue as liens against the subject premises to the present date.

HH. Despite her knowledge that the two (2) Silber/Kay mortgages continue to constitute liens affecting title to the subject premises respondent, nonetheless, on March 6, 1985, issued to Rad a Chicago title insurance policy without excepting from the coverage of such policy the two (2) Silber/Kay mortgages aforesaid.

II. By issuing such Chicago Title Insurance policy to Rad without excepting therefrom the liens of the two (2) Silber/Kay mortgages known by respondent to constitute record exceptions to title, respondent thereby bound her principal, Chicago, to pay to Rad any loss or damage to the extent of the policy coverage sustained by Rad by reason of the existence of the two (2) Silber/Kay mortgages.

JJ. As a result of respondent's actions as aforesaid, Chicago paid in excess of $12,000.00 to Kay and Silber.

With respect to count VI of the bar's complaint, I find:

KK. In or about November, 1984 respondent was retained by one Willie Beckham, Jr. (hereinafter called "Beckham") to contest the proposed adoption of Beckham's daughter by third parties.

LL. Respondent received and accepted $250.00 from Beckham on account of respondent's retainer.

MM. At the time respondent was retained by Beckham there had been commenced in the Circuit Court of the Seventeenth Judicial Circuit, Broward County, Florida, Case No. 84-19303CV an adoption proceeding

wherein and whereby Annie Mildred Humphries and William J. Humphries sought to adopt Beckham's natural daughter.

NN. Respondent did not appear in the adoption proceeding and filed no objection on behalf of Beckham to the proposed adoption.

III. RECOMMENDATIONS AS TO WHETHER OR NOT THE RESPONDENT SHOULD BE FOUND GUILTY:

I make the following recommendations with respect to the violations charged by the bar:

With respect to counts I and II of the bar's complaint, I recommend that the respondent be found guilty of violating Disciplinary Rules 6-101(A)(3), 7-101(A)(1) and 7-101(A)(2) of the Code of Professional Responsibility.

With respect to count III of the bar's complaint I recommend that respondent be found guilty of violating Fla. Bar Integr. Rule, article XI, Rule 11.02(3) and of violating Disciplinary Rule 1-102(A)(4) of the Code of Professional Responsibility.

With respect to count IV of the bar's complaint I recommend that respondent be found guilty of violating Disciplinary Rules 6-101(A)(3), 7-101(A)(1) and 7-101(A)(2) of the Code of Professional Responsibility and of violating Fla. Bar Integr. Rule, article XI, Rule 11.02(4).

With respect to count V of the bar's complaint I recommend that respondent be found guilty of violating Fla. Bar Integr. Rule, article XI, Rule 11.02(3) and of violating Disciplinary Rules 1-102(A)(3), 1-102(A)(4) and 1-102(A)(6) of the Code of Professional Responsibility.

With respect to count VI of the bar's complaint I recommend that respondent be found guilty of violating Disciplinary Rules 6-101(A)(3), 7-101(A)(1) and 7-101(A)(2) of the Code of Professional Responsibility. I recommend that she be found not guilty of violating Disciplinary Rules 6-101(A)(1) and 6-101(A)(2) of the Code of Professional Responsibility.

IV. RECOMMENDATIONS AS TO DISCIPLINARY MEASURES TO BE APPLIED:

I recommend that as discipline for the violations hereinabove enumerated respondent be disbarred. See The Florida Bar v. Weiss, 398 So. 2d 1364 (Fla. 1981); The Florida Bar v. Delves, 397 So. 2d 919 (Fla. 1981); The Florida Bar v. Agar, 394 So. 2d 405 (Fla. 1981); and The Florida Bar v. Welch, 309 So. 2d 537 (Fla. 1975).

V. PERSONAL HISTORY:

Respondent was admitted to The Florida Bar on May 16, 1981 and is 32 years of age.

VI. STATEMENT AS TO PAST DISCIPLINE:

In The Florida Bar v. Barenz, 477 So.2d 563 (Fla. 1985) respondent was suspended for thirty (30) days in connection with numerous trust account violations.

VII. STATEMENT OF COSTS OF THE PROCEEDING AND RECOMMENDATIONS:

The costs of these proceedings were as follows:

Administrative Costs:	
Grievance committee level -------	$ 150.00
Referee level ----------	150.00
Court Reporter Costs:	
Grievance committee level -------	975.95
Referee level ----------	1,100.75
Witness Fees:	
Grievance committee level ------	26.40
Referee level ----------	42.44
Florida Bar Auditor ----------	493.43
Subpoena Service Costs ----------	383.00
Document Examination Costs ----------	187.28
Expert Witness (Linda J. Hart) -------	225.00
Photocopies ----------	53.00
TOTAL ----------	3,787.25

I recommend that such costs be taxed against the respondent.

RENDERED this 3rd day of July, 1986 at Fort Lauderdale, Broward County, Florida.

WILLIAM W. HERRING, Referee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing report of referee was furnished to David M. Barnovitz, assistant staff counsel, The Florida Bar, 915 Middle River Drive, Suite 602, Ft. Lauderdale, FL 33304, Barry G. Roderman, Esquire, attorney for respondent, 1000 South Federal Highway, Ft. Lauderdale, FL 33316 and to Patricia A. Rahl, Esquire, attorney for respondent, 2951 High Point Boulevard, Kissimmee, FL 32741 by regular mail, on this 3rd day of July, 1986.

WILLIAM W. HERRING, Referee