

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

FILED
SID J. [unclear]
OCT 20 1986
CLERK, SUPREME COURT
BY [unclear] Deputy Clerk
CONFIDENTIAL

THE FLORIDA BAR,

Complainant,

v.

SYDNEY ADLER,

Respondent.

CASE NO. 68,449
TFB #12A85H02

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the article XI of the Integration Rule of The Florida Bar, a final hearing was held on October 14, 1986. The enclosed pleadings, orders, transcripts and exhibits 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 following:

For The Florida Bar	Diane Victor Kuenzel
For The Respondent	Warren Goodrich

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:

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.

In the fall of 1976, respondent was invited by Ralph P. Lebkuecher and Robert S. Spencer, two registered security brokers from Sarasota, Florida, to participate in a tax shelter coal mining joint venture in West Virginia, with Lebkuecher, Spencer and another investor.

According to the Internal Revenue Service regulations, the tax shelter would arise when advance royalties were distributed to the investor. The investor could offset the royalties against non-recourse obligations securing loans to the joint venture and claim the resulting deductions on his individual tax returns. However, as of the end of October, 1976, non-recourse obligations no longer provided an investor a basis for taking a tax deduction.

Respondent agreed to become an investor and invested \$4,400.00 in cash.

The Joint Venture Agreement and related documents were prepared by respondent in his law offices.

The joint venture, known as LALS Group, executed a Joint Venture Agreement and a \$500,000.00 non-recourse note in late December, 1976, but backdated the documents to reflect an October 27, 1976 date. This date was prior to the effective date of the change in the I.R.S. regulations relating to non-recourse obligations. Respondent had knowledge of the backdating of the documents and by his signing of them implicitly acquiesced in such action.

Respondent claimed a \$125,000.00 tax deduction on his 1976 tax return, based on the regulation prior to the effective date of the change. The deduction was disallowed by the I.R.S., resulting in an assessment of \$380.00, including interest and penalties, against respondent. Respondent paid the assessment.

In mid-1979, in connection with an audit of the LALS Group partnership returns, the I.R.S. contacted the C.P.A. who had filed the returns for LALS, requesting the original documents. At the C.P.A.'s request, respondent sent him the LALS Group Joint Venture Agreement. The C.P.A. subsequently delivered the document to the Secretary of the Treasury.

In April 14, 1983, a one-count misdemeanor information was filed in the United States District Court for the Southern District of West Virginia against respondent, charging him with violation of Title 26, United States Code, Section 7207, and Title 18, United States Code, Section 2, for willfully delivering and disclosing to the Secretary of the Treasury and his delegate, the LALS Group Joint Venture Agreement, dated October 27, 1976, which was known by respondent to be fraudulent and false as to a material matter, that is, the date of the document.

Respondent pled guilty to the charge and was sentenced to a three-year probationary period and a \$10,000.00 fine.

III. Recommendation as to Whether or Not the Respondent Should Be Found Guilty: I recommend that the respondent be found guilty of the following violations of the Code of Professional Disciplinary Rule 1-102(A)(4) (conduct involving deceit, dishonesty, fraud, or misrepresentation) and Integration Rule 11.02(3)(a) (conduct contrary to honesty, justice, or good morals).

IV. Recommendation as to Disciplinary Measures to be Applied: I recommend that the respondent receive a Public Reprimand with an appearance before the Board of Governors and payment of costs.

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

(1) Age: 60

(2) Date Admitted to Bar: 1953

(3) Mitigating Factors: Respondent's motive for back dating was not to seek a monetary advantage. The \$380.00 he paid when the tax deduction was disallowed, was inconsequential to any motive. This case did not involve misconduct affecting a client. Respondent's misconduct will not be repeated. As one of the cases in support of its argument, the Bar cited The Florida Bar v. Blankner at 457 So.2d 476 (Fla. 1984). I find that the difference between Blankner and respondent's case is that respondent's misconduct involved a single instance while Blankner failed to file income tax for nine separate years. I noted in Blankner, several cases where a respondent failed to file I.R.S. and was issued a Public Reprimand.

(4) Prior Disciplinary Record: None

VI. Statement of Costs and Manner in which Costs Should Be Taxed: I find the following costs were reasonably incurred by The Florida Bar.

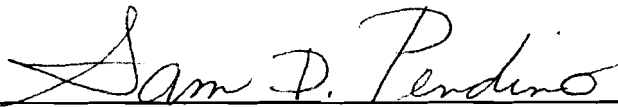
Grievance Committee Level	
Administrative Costs	\$ 150.00
Court Reporter (11/20/85)	124.00
Copies U.S. V Adler CR 83-20027	16.00
	<hr/>
	\$ 290.00

Referee Level	
Administrative Costs	\$ 150.00
Court Reporter (10/14/86)	221.00
	<hr/>
	\$ 371.00

TOTAL AMOUNT DUE TO DATE: \$ 660.00

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

DATED this 15th day of October, 1986.



SAM D. PENDINO
Referee

Copies Furnished To:

Warren Goodrich, Counsel for Respondent
Diane Victor Kuenzel, Bar Counsel