

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

FILED

SHIRLEY W. WATKINS

FEB 2 1987

CLERK SUPREME COURT
BY _____
Deputy Clerk

THE FLORIDA BAR,
Complainant,

CONFIDENTIAL

v.

CASE NO. 68,857
(TFB No. 11K86M34)

ALBERT D. GREENFIELD,
Respondent.

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS. By order of June 11, 1986 the undersigned was duly appointed as referee for the purpose of hearing and determining all matters in this disciplinary proceeding and to submit her findings of fact and recommendations to the Supreme Court of Florida, as provided in Rule 1-7.5 of the Rules Regulating The Florida Bar.

It is alleged that Respondent, Albert D. Greenfield, violated the Code of Professional Responsibility, DR1-102(A)(4); DR1-102(A)(5); DR1-102(A)(6); DR9-102(A); DR9-102(B); Rule 11.02(3) and Rule 11.02(4). These proceedings arose out of allegations that the Respondent misappropriated assets of the estate of [REDACTED] without the consent of his client.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: Randi Klayman Lazarus, Miami
For the Respondent: S. Melvin Apotheker and Richard Phillips

II. SUMMARY OF FACTS. Respondent, Albert D. Greenfield, was both personal representative and attorney for [REDACTED]. The sole heir of the estate was the deceased's spouse, [REDACTED].

It is admitted that approximately \$28,135.70 was withdrawn from the estate's assets by Respondent. Portions thereof, however, represent attorney's fees and personal representative's fees.

There was, ~~however~~, no written agreement concerning these fees. Approximately \$20,000.00, ~~however~~, Respondent characterizes as having borrowed from the estate's assets. There was no promissory note executing evidence of the debt, no written consent from the heir of the Estate nor the Court. There was a note on the check stub for the estate checking account that it was a loan. A substantial portion of the sum was repaid prior to The Florida Bar audit in this cause and as of this date all has been repaid. Respondent misappropriated the money but at all times intended to repay same and did not conceal his actions and did in fact ^{re}pay said amount. LW

Prior to the decedent's death, [REDACTED] and Respondent were close personal friends for a period of 20 years. There was a will contest at the inception of the estate between Mrs. [REDACTED] and Mr. [REDACTED]'s daughter. Mr. Greenfield claims that [REDACTED] consented verbally to borrowing of the funds. She denies that any consent was given. [REDACTED] testified that her first knowledge concerning the withdrawal of the funds came from The Florida Bar.

The Respondent's reason for the need of monies was due to an IRS assessment and lien upon his residence which required \$130,000.00 payment to IRS. It should be noted that Mr. Greenfield ultimately received a substantial refund of \$90,000.00 from the IRS indicating that much of the money he was forced to pay was not in fact owed and that he had not generated the income for which he was being taxed.

Mr. Greenfield did not conceal any of the withdrawals upon inquiry by The Florida Bar and has repaid all sums in question. The Estate was involved in an appeal of the lower court's decision on the will contest during the period of time in question and Mr. Greenfield's actions did not delay the distribution of the estate assets.

III. RECOMMENDATION AS TO WHETHER OR NOT RESPONDENT SHOULD BE FOUND GUILTY.

That Respondent, Albert D. Greenfield, be found guilty of violating the Code of Professional Responsibility, Disciplinary Rule 9-102(B) and Rules 11.02(3) and 11.02(4) of the Integration Rule of The Florida Bar.

That the evidence does not support a finding of guilt as to Disciplinary Rules 1-102(A)(4), 1-102(A)(5), 1-102(A)(6) and 9-102(A) of the Code of Professional Responsibility.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED.

The misappropriation of client's funds even with the intent to repay is a serious offense which requires more than a reprimand. Consideration, however, should be given to the surrounding circumstances, the length of practice without incident, Respondent's state of mind at the time and his lack of any attempt to conceal or misrepresent his actions.

It is the undersigned's recommendation that Respondent be suspended from the practice of law for one (1) year during which time he should complete a ^{full}~~school~~ semester course in ^{LW} ethics and pay the costs of these proceedings.

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD.

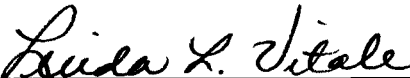
During this period involving the IRS liens, Respondent was hospitalized with a bleeding ulcer. Albert D. Greenfield graduated from law school in 1954, he has been active with civic and charitable organizations. Except for a private reprimand in 1960 concerning what was then considered to be advertising, he has not been involved in any prior grievance proceedings.

VI. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED.

Administrative Costs at Grievance Committee Level and Referee Level	\$300.00
Court Reporter Fees:	
Grievance Committee Hearing	368.00
Referee Hearing	557.25
Witness Fees and Subpoena Costs	<u>245.52</u>
TOTAL:	\$1,470.77

It is recommended that the above costs and expenses be charged to the Respondent, for which sum let execution issue.

Dated this 27th day of January, 1987.


LINDA L. VITALE, Referee
Circuit Court Judge
Broward County Courthouse
201 SE 6th Street
Ft. Lauderdale, FL 33301
(305) 357-7779

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of January, 1987, true and correct copies of the foregoing Report of Referee were mailed by ordinary U.S. mail to Randi Klayman Lazarus, Bar Counsel, The Florida Bar, 444 Brickell Avenue, 211 Rivergate Plaza, Miami, Florida, 33131; John T. Berry, Staff Counsel, The Florida Bar, Tallahassee, Florida, 32301-8226; S. Melvin Apotheker, Attorney for Respondent, 7101 SW 102nd Avenue, Miami, Florida, 33173; and to Richard Phillips, Attoroney for Respondent, 7101 SW 102nd Avenue, Miami, Florida, 33173.


LINDA L. VITALE, Referee