IN THE SUPREME COURT OF FLORIDA
(Before a Referee)



THE FLORIDA BAR,

Complainant,

vs. CASE NO. 68,938

JOHN MONTGOMERY GREENE,

Respondent.

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REPORT OF REFEREE

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, a hearing was held on Monday, December 30th, 1986, at 1:30 P. M. in the Volusia County Courthouse Annex, Daytona Beach, Florida.

II. Findings of Fact: After considering all of the pleadings and evidence before me, including specifically the Bar's Exhibit No. 1, Requests for Admission and the Bar Exhibit No. 2,a report of the proceedings before the Grievance Committee, both of such exhibits being received in evidence without objection of the respondent, I find as follows:

(a) The Respondent, John Montgomery Greene, is, and at all times relevant hereto, was a member of the Florida Bar practicing law in Ocala, Marion County, Florida. In November of 1982 Mr. and Mrs. Nutt secured Respondent's representation of them on the pending sale of six lots. Prior to the closing Respondent learned that there were several judgment liens against the property and by letter dated December 10, 1982, advised the Nutts as to the title problem and of the possibility that prior mortgages that they had held on the property would have to be foreclosed in order to have a title

superior to the liens. Prior to contacting Respondent the Nutts had held mortgages on this property which were in default and rather than foreclose the same they received and recorded Warranty Deeds in full satisfaction of the notes and mortgages. Apparently the liens arose between the time the Nutts received the mortgages and the time their deeds to the property were recorded.

(b) Subsequent to the letter of December 10, 1982, Respondent repeatedly advised the Nutts and their realtor that he would clear the title to the lots. However by his own admission he never quite got to it because of other matters in his office. Actually Respondent candidly admitted that the matter was continually put off because it was such an involved mess. As a result the pending sale of the six lots fell through in June of 1983 and the buyer obtained his deposit back.

(c) The procrastination of Respondent continued through the balance of 1983 until a point in time in 1984 when the Nutts obtained another purchaser for three of the lots. The purchaser was to buy two of the lots for $24,000.00 cash and the third lot for $12,000.00 with a purchase money mortgage. In preparation of the sale an employee of the Respondent, who was not a member of the Bar, checked the property records and reported back to Respondent that the title was now clear, which Respondent reported to the Nutts as well as the purchasers and the transaction was closed in October of 1984.

(d) After the closing it was discovered that the information Respondent had given the Nutts as well as the purchasers was incorrect and that there were still liens against the property. Thereafter, in September of 1985, Respondent personally, out of his own funds, refunded the $24,000.00 to the purchasers.

(e) The above facts are established by clear and convincing evidence. In determining the weight to be given to Respondent's failure to respond to the corrected Request for Admission Paragraph K. the undersigned does not find that such failure to respond conclusively established those matters contained in said Paragraph K. of the Request for Admission in that other evidence proffered by the Bar demonstrates the likelihood of the non-existence of most of such allegations. It is clear from the evidence that the Respondent has committed no dishonesty nor intentional misrepresentation but has rather failed to give the matter left in his care the attention required by the Cannon of Ethics. It appears from the record in this case that there was and is the possibility that he could do nothing for his clients. However if that was and is the case he owed the client a duty to advise him of such opinion. No evidence was proffered concerning Respondent's supervision of his non-lawyer personnel.

For these reasons the undersigned makes the following recommendations:

III Recommendations: As to the charge that the Respondent violated Article XI, Rule 11.02(3)(a) of The Florida Bar's Integration Rule of Conduct Contrary to Honesty, Justice or Good Morals for Misrepresentations, the respondent should be found not guilty.

As to the charge that the respondent has violated Disciplinary Rule 1.102(A)(4) for conduct involving misrepresentation and deceit, the respondent should be fount not guilty.

As to the charge that the respondent violated Disciplinary Rule 1-102(A)(6) for misconduct reflecting adversely on his fitness to practice law the respondent should be found not guilty.

As to the charge that respondent violated Disciplinary Rule 3-104(A) for failing to properly supervise non-lawyer personnel, the respondent should be found not guilty.

As to the charge that respondent violated Disciplinary Rule 3-104 (C) for failing to insure compliance by non-lawyer personnel, the respondent should be found not guilty.

As to the charge that the respondent violated Disciplinary Rule 3-104(D) for failing to examine and be respondible for work delegated to non-lawyer personnel, the defendant should be found not guilty.

As to the charge that respondent violated Disciplinary Rule 6-101(A)(3) for neglecting a legal matter entrusted to him, the respondent should be found guilty.

I recommend that the Respondent receive a public reprimand and be placed on probation for a period of two years. The terms of probation recommended are as follows:

> 1. That the Respondent furnish to The Florida Bar quarterly a list of all legal matters left in his care as an attorney and which have not been fully completed within six months of the time they were initially left in his care and to include in such list the initials of his client together with the

date that they were initially left in his care and the reason such representation has not been concluded.

2. That the Respondent pay the cost of these proceedings within sixty (60) days of this date, said cost to be taxed at a hearing upon motion of The Florida Bar. In addition thereto Respondent shall pay to The Florida Bar the sum of $100.00 per month as and for cost of supervision for the term of probation.

IV. Personal History and Past Disciplinary Record: Prior to making the above recommendation of discipline I considered the following prior disciplinary record of the Respondent, to-wit:

1970 Respondent received a public reprimand and one year probation for failing to file income tax returns (235 So.2d 7)

1985 Respondent received one year probation with a public reprimand upon a charge of neglecting a legal matter entrusted to him (463 So.2d 213)

Dated this 27th day of Feb 1987.

Robert D. Mellen
REFEREE

Copies to:

Jan Wichrowski, Bar Counsel
John Montgomery Greene, Esquire