

IN THE SUPREME COURT OF FLORIDA
Before a Referee

The Florida Bar,
Complainant,

v.

IRVIN R. SHUPACK,
Respondent.

FILED
SID J. WHITE

JAN 16 1987

CLERK, SUPREME COURT
By _____
Deputy Clerk

CONFIDENTIAL

CASE NO. 69,280

The Florida Bar Case
No. 17C86F47

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed Referee to conduct disciplinary proceedings herein according to The Florida Bar Integration Rule, Article XI, hearings were held before the Referee on the following dates: November 21, 1986 and December 23, 1986.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: Jacquelyn Plasner Needelman

For the Respondent: Claudette Pelletier

The Judicial Referee received in evidence nine (9) exhibits on behalf of The Florida Bar.

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:

AS TO COUNT I

1. The Respondent, Irvin R. Shupack, 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.

2. On or about May 15, 1981, Joseph DiBlasio and Nicholas DiBlasio owned the following real property and entered into a Deposit Receipt Contract with Landmark Florida Title Corporation to sell the following described real property located in Broward County, Florida:

Lot Seventeen (17) of Garden Villas, according to the Plat thereof, recorded in Plat Book 38, page 50, of the Public Records of Broward County, a/k/a 1422 Arthur Street, Hollywood, Florida.

3. Before the closing, Landmark Florida Title Corporation assigned the contract to Kucan Investment Corporation. Mr. Shupack represented Kucan Investment Corporation in its dealings with the DiBlasios and the Liebermans.

4. The closing on the DiBlasio Deposit Receipt Contract took place on June 29, 1981. The property was transferred by Warranty Deed to Kucan Investment Corporation for \$67,500. At closing, the DiBlasios took back from Kucan Investment Corporation a note and purported purchase money first mortgage dated June 29, 1981, in the amount of \$49,500.

5. Regardless of the DiBlasios' ownership of the property, Richard Abraham (who was, in effect, "Kucan") and Kucan Investment Corporation on June 25, 1981, fraudulently executed and delivered a note and mortgage to third parties, Fred Lieberman and Eleanor F. Lieberman, in the amount of \$49,500. The Lieberman note and mortgage were executed and delivered by Kucan Investment Corporation and Richard Abraham five days prior to the date that Kucan Investment Corporation took title to the property on June 29, 1981.

6. The DiBlasios were represented at closing by attorney Ben V. Haywood. Mr. Shupack did not affirmatively disclose to the DiBlasios or to Mr. Haywood that Kucan Investment Corporation (five days prior to its closing with the DiBlasios) had executed and delivered a mortgage and note to the Liebermans. Mr. Shupack knew of the existence of the Lieberman mortgage, having it in his possession. Although he prepared most of the DiBlasio closing papers, Mr. Shupack fraudulently failed to disclose to Mr. Haywood, either orally or in any of the closing papers, that the Lieberman note and mortgage existed. Mr. Shupack knew that neither Mr. Haywood nor his clients could learn of the existence of the Lieberman mortgage because it had not been recorded. At closing, Mr. Shupack asked Mr. Haywood to give him the DiBlasio mortgage in order to record it. He did so for the specific secret purpose of insuring that the DiBlasio mortgage would be recorded after the Kucan mortgage. Mr. Shupack then fraudulently recorded the Lieberman mortgage before recording the DiBlasio mortgage, thereby rendering the DiBlasios' mortgage to second status. At all times referenced above, the DiBlasios believed they were receiving a purchase money first mortgage. In furtherance of this fraudulent scheme, Mr. Shupack placed documentary stamps in the amount of \$416.25 on the warranty deed from DiBlasio to Kucan which established a false purchase price of \$92,500, instead of the correct purchase price of \$67,500.

7. Kucan Investment Corporation immediately defaulted on the DiBlasio mortgage, and litigation ensued. Fortunately, the DiBlasios recovered their loss, partly from Mr. Shupack's insurance carrier and partly from Mr. Haywood's insurance carrier. The Referee notes that Mr. Haywood was guilty of negligence by not fully examining the DiBlasio mortgage. If he had carefully examined the mortgage, he would have noted language (in extremely fine print) on the back indicating the DiBlasios might be getting a second mortgage. Mr. Haywood's negligence should, to some extent, mitigate the discipline against Mr. Shupack because Kucan's scheme would have been discovered had Mr. Haywood properly represented the DiBlasios.

III. Recommendation as to Whether or Not the Respondent Should Be Found Guilty:

As to each count of the complaint, I make the following recommendations as to guilt or innocence:

AS TO COUNT I

I recommend Mr. Shupack be found guilty of the following violations of his oath as an attorney, The Florida Bar Integration Rules and Disciplinary Rules of the Code of Professional Responsibility, to wit:

By engaging in the above-stated fraudulent conduct, Mr. Shupack violated The Florida Bar Integration Rule, Article XI, Rules 11.02(3) (a) (engaging in conduct contrary to honesty, justice or good morals), and Disciplinary Rules 1-102(A) (4) (an attorney shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation) and 7-102(A) (7) (in his representation of a client, a lawyer shall not counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent) of the Code of Professional Responsibility.

I recommend Mr. Shupack be found not guilty of violating The Florida Bar Integration Rule, Article XI, Rule 11.02(4) (property entrusted to an attorney for a specific purpose is held in trust and must be applied only to that purpose) because Mr. Shupack did record the DiBlasio mortgage albeit not in first position.

IV. Recommendation as to Disciplinary Measures to be Applied:

I recommend Mr. Shupack be suspended from the practice of law for a period of thirty (30) days with automatic reinstatement at the end of the period of suspension as provided in Rule 11.10(4). This recommendation is made notwithstanding the fact that Mr. Shupack has been disciplined in the past because of the following reasons:

1. He has maintained a good record since the Supreme Court suspended him for thirty (30) days in 1984 as a result of his actions in representing a client during 1981, the approximate same time (within three months) that the events of this case occurred. It therefore appears that he has had no disciplinary problems for the past 5-1/2 years. Mr. Shupack, although admitted to the bar in 1977, had in effect been in private practice only a few months before encountering these difficulties.

2. He is the sole support of his wife and 7-year-old child.

3. The cumulative effect of this disciplinary proceeding is greatly less because of Mr. Haywood's failure to adequately protect his clients.

4. The Referee truly believes Mr. Shupack is repentant, acknowledges his mistake and is on the road to rehabilitation.

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 Mr. Shupack, to wit:

Age: 38

Date Admitted to Bar; July 18, 1977

Prior disciplinary convictions and disciplinary measures imposed therein: thirty (30) day suspension, violation of Disciplinary Rule 1-102(A)(4) (an attorney shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation) Case No. 64, 667, The Florida Bar Case No. 17B82F26.

VI. Statement of Costs and Manner in Which Costs Should be Taxed:

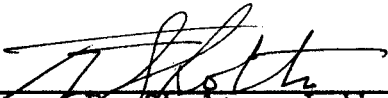
I find the following costs were reasonably incurred by The Florida Bar:

Administrative Costs

Grievance Committee Level	\$ 150.00	
Referee Level	<u>150.00</u>	\$ 300.00
Photocopies		307.00
Witness Fees		35.00
Certified File Copy		10.00
Court Reporter Costs		
Appearance and transcripts		
April 7, 1986	386.15	
November 21, 1986	486.00	
December 23, 1986	<u>139.99</u>	1,012.14
Judicial Referee's Travel		
to Fort Lauderdale 11-21-86		
and return		26.32
Total Due The Florida Bar		<u>\$1,690.46</u>

It is recommended that the foregoing itemized costs be charged to the respondent.

Dated at West Palm Beach, Florida on JAN 13 1987 .



Thomas R. Sholts, Judicial Referee

Copy furnished:

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