

IN THE SUPREME COURT OF FLORIDA

(Before a Referee)

THE FLORIDA BAR,

Complainant,

Case No. 69,592

vs.

(TFB No. 07A86C40)

WALTER B. DUNAGAN,

Respondent

FILED
MAY 12 1987

REPORT OF REFEREE

SUPREME COURT
JUDICIAL CENTER
TALLAHASSEE, FLORIDA

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the Rules of Discipline, hearings were held on February 3, 1987. The Pleadings, Notices, Motions, Orders, Transcripts and Exhibits all of which are forwarded to The Supreme Court of Florida with this report, constitutes the record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar David G. McGunegle, Esq.
For The Respondent, Walter B. Dunagan, Esq.

II. Findings of Fact as to Each Item of Misconduct of which the Respondent is charged: The Respondent was retained by Kay Golden in May 1985 to sell or rent her property. Tr. p.14 1.17-18. A Power of Attorney and warranty deed were signed by the client. The client recognized her signature on the deed but testified that she was unaware that she had executed it. Tr. p.15 1.18 - p.16 1.1.

The Respondent intended for the initial warranty deed to be held in trust for the client but no trust documents were drawn and the warranty deed was not recorded. Tr. p.124 1.2 through p.125 1.24.

The Respondent failed to provide any accounting for rents collected. Tr. p.128 1.18-25. The property was rented for two months prior to his purchase for \$350 per month with a \$50 mortgage payment paid from rental.

The client and a relative periodically obtained sums of money from the Respondent due to emergencies and allegations of abuse by the client's husband of the client and children. Tr. p.41 l. 17-20.

On November 8, 1985 the Respondent bought the property from the client for \$6,000 plus payment of liens and in consideration of cash advances which had been made to the client. Tr. p.29 l. 8-19 and Tr. p.90 l.5-12.

At the time of purchase Respondent did not advise client to seek independent legal advice and did not advise her that he was not acting as her attorney. Tr. p.33 l.23 to p.34 l.2.

Property was appraised at \$25,200 in May 1985. Exh. 4. Respondent had secured a contract for Sale for \$32,000 but this fell through when the buyers were unable to secure financing. Exh. 5.

The client testified that she was not aware that she was selling the property to the attorney. Tr. p.86 l.2 to p. 87 l.21.

Complaint to the Bar was made by a former secretary and not by the client. Tr. p.37 l.18-20. That secretary has pled no contest to felony charges arising out of embezzlement of funds from the Respondent.

III. A. Blind Trust: I recommend that the Respondent be found not guilty of violating disciplinary Rule 1-102(A)(f) with respect to the Blind Trust.

This is in recognition that the Respondent did place his client at risk by execution of the warranty deed and failing to follow through in providing trust instruments or recording the deed. This failure to act result in no harm to the client. The office records of the Respondent would have supported that the property was held in trust.

B. I recommend that the Respondent be found not guilty of violating disciplinary rule 1-102(A)(6) by failing to render an accounting.

C. I recommend that the Respondent be found guilty of violating disciplinary Rule 5-104(A) by entering into a business transaction with the client and failing to advise the client to obtain independent legal counsel.

As the Bar pointed out at the time of the hearing this is the main issue in this case. At the time of the hearing, the Respondent still regards this transaction as an arms-length real estate deal at a time that the client required immediate cash and that she had been fully advised as to appraised value. Tr. p.138-140.

The Bar would concede that there is no evidence that the Respondent deliberately misrepresented anything nor that he had a willing buyer or would be in a position of a clear title upon purchase. There is an uncertainty as to what value the Respondent may obtain for this property but there is a realistic probability of approximately \$10,000 disparity between what the client realized and the value of the property.

IV. Recommendation as to Disciplinary measures to be applied:

I recommend that the Respondent receive a public reprimand and be placed on probation for a period of six months.

V. Personal History and Past Disciplinary Record:

After finding of guilt and prior to recommending discipline to be recommended pursuant to Rule 3-7.5(k)(94), I considered the following personal history and prior disciplinary record of the respondent, to wit:

Age: 49
Date Admitted to Bar: 1970
Prior Disciplinary convictions and disciplinary measures imposed therein: None
Other personal data: Total cooperation with the Bar including locating former client for the Bar.

Respondent seemed concerned and quite sincere that he would never fail to advise a client to seek independent counsel in relation to any business transactions.

VI. Statement of costs and manner in which costs should be taxed:

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

A. Grievance Committee Level Costs:

1. Administrative Costs	\$150.00
2. Transcript Costs	357.97
3. Bar Counsel/Branch Staff Counsel Travel Costs	7.22

B. Referee Level Costs

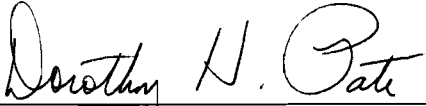
1. Administrative Costs	\$150.00
2. Transcript Costs	501.10
3. Bar Counsel/Branch Staff Counsel Travel Costs	82.34
4. Investigator's Expenses	274.26

C. Miscellaneous Costs

1. Witness Fees	\$50.00
TOTAL ITEMIZED COSTS:	\$1572.89

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 9 day of March, 1987.


CIRCUIT JUDGE
REFEREE

Copies:

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Memorandum of Law Clerk attached as Exhibit A