

IN THE SUPREME COURT OF FLORIDA
BEFORE A REFEREE

THE FLORIDA BAR,

Complainant,

v.

HUGH PAUL NUCKOLLS,

Respondent.

TFB File No. 20A86F67

Case No. 69,639

FILED
SUPREME COURT

MAY 30 1987

REPORT OF REFEREE CLERK, SUPREME COURT

By _____
Deputy Clerk

I. SUMMARY OF PROCEEDINGS:

By order dated November 24, 1986 I was appointed referee for the Court in the above matter, to hear, conduct, try and determine matters in this proceeding and to submit my findings of fact and recommendations to the Court. The pleadings, notices, motions, orders, transcripts and exhibits, all of which are forwarded to the Supreme Court with this report, constitute the entire record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar - David M. Barnovitz, Esquire

For the respondent - Harry A. Blair, Esquire and

Marilyn Miller, Esquire

II. FINDINGS OF FACT AS TO EACH ITEM OF MISCONDUCT OF WHICH THE RESPONDENT IS CHARGED:

After considering all of the pleadings and evidence before me, I find, with respect to each of the counts recited in the bar's complaint:

A. 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.

B. At all times recited in the bar's complaint, respondent, Michael C. Dewberry, John V. Hugill and Louis Sali were engaged in a general partnership.

With respect counts I and II of the bar's complaint, I find:

C. At all times recited in the bar's complaint the partnership was engaged in the development, marketing and sale of a twenty-two (22) unit townhouse project at Lee County, Florida known as DeSoto Village.

D. At all times mentioned in the bar's complaint respondent acted as attorney for the partnership.

With respect to count I of the bar's complaint, I find:

E. In or about January, 1985, the Partnership agreed to sell four (4) of the DeSoto Village units (units numbers 304, 305, 306 and 307) to one Bayoan C. Mateo, hereinafter called "Mateo".

F. In connection with such purchase the said Mateo made application to Pioneer Federal Savings and Loan Association of Clearwater, Florida, hereinafter called "Pioneer", seeking four (4) purchase money mortgage loans, each in the principal sum of \$36,000.00 upon a representation that the purchase price of each such unit was \$45,000.00.

G. Upon inquiries by Pioneer, respondent as a partner of and attorney for the Partnership, represented to Pioneer that the purchase price of each of the four (4) townhouse units was \$45,000.00 and that there had been paid by or on behalf of Mateo on account of each such unit a down payment of \$9,000.00. Such representations included several written representations to Pioneer in response to inquiries regarding the existence of the down payments of \$9,000.00 per unit.

H. At the times respondent represented to Pioneer that there had been paid by or on behalf of Mateo a \$9,000.00 down payment on each of the four (4) townhouse units and at the time respondent furnished his written representations to Pioneer respondent knew that there had not been paid by or on behalf of Mateo the four (4) \$9,000.00 down payments or any part thereof.

I. Respondent wrote a letter to Pioneer dated February 18, 1985 reciting:

This will acknowledge receipt of the sum of \$9,000.00 as it pertains to the above referenced matter in the form of one (1) check in the amount of \$36,000.00 from Rental One to be applied to four (4) unit closings as and for payment on the unit referred. Said \$9,000.00 was received at time of closing and applied to balance due and owing from buyer thereby requiring no further funds from the buyer.

On February 20, 1985 respondent wrote to Pioneer enclosing a copy of such \$36,000.00 check and stating:

Pursuant to your telephone conversation with my secretary, enclosed please find a copy of the Rental One check given to H. Paul Nuckolls along with a receipt for same reflecting that the designated amounts as it pertains to the designated loan number was applied in order that there is in fact no monies due from buyer at time of closing and in fact shows an overpayment by buyers which is to be applied to maintenance fees.

J. In fact, respondent, after receiving the \$36,000.00 check from one of the Partnership partners, knowing that there were insufficient funds to cover such check, failed to deposit or negotiate the same and returned the check to the partner he received it from.

K. Respondent thereafter, despite his knowledge that Mateo had never paid the four (4) \$9,000.00 down payments and despite his representations to Pioneer to the contrary, never informed Pioneer that respondent's representations were false and that the actual consideration paid by Mateo and accepted by the Partnership for the four (4) townhouse units was \$36,000.00 per unit and not \$45,000.00 per unit.

With respect to count II of the bar's complaint, I find:

L. On or about October 3, 1984, respondent, acting for the partnership, entered into three (3) contracts with one Donald C. Williamson, hereinafter called "Williamson" for the sale and purchase by Williamson of three (3) DeSoto Village townhouse units (units 301, 302 and 303) for a stated purchase price of \$45,000.00 per unit.

M. Williamson thereafter, with respondent's knowledge, made application to Progressive Financial Services, hereinafter called "Progressive", for three (3) purchase money mortgage loans, each in the principal sum of \$36,000.00, upon a representation that the purchase price of each such unit was \$45,000.00.

N. Respondent, as a partner of and as attorney for the Partnership, represented to Progressive that the purchase price of each of the three (3) townhouse units was \$45,000.00 which representation was contained in statements furnished to Progressive prepared and executed by respondent and in affidavits furnished to Progressive executed and verified by respondent.

O. In the statements prepared, executed and furnished by respondent to Progressive respondent represented to Progressive that there was cash due from Williamson in the sum of \$9,359.54 upon each of the three (3) townhouse unit sales.

P. In fact, respondent knew at the time he made the representations to Progressive as hereinabove found in findings N and O of this report, that Williamson had not theretofore paid the \$9,000.00 difference between the stated contract price and purchase money mortgage loan on each of the three (3) units, did not make such payments upon the closing of such purchase money mortgage loans and thereafter would not make such payments.

Q. At the time respondent made the representations to Progressive as hereinabove found in findings O and P, respondent knew that contrary to the written contracts of sale and purchase and contrary to the statements and affidavits the Partnership had agreed to sell the three (3) townhouse units hereinabove referred to to Williamson for the total purchase price of \$36,000.00 per unit.

With respect to count III of the bar's complaint, I find:

R. In March, 1984, Louis Sali, one of the Partnership partners, entered into an exchange agreement and contract for sale with a general partnership known as Blisswood-Brenner Florida Associates, hereinafter called "Blisswood" whereby the principal on whose behalf Sali was acting, in return for conveying certain realty and paying a certain amount of cash to Blisswood, would receive from Blisswood a conveyance of a twelve (12) unit apartment complex located at Lee County, Florida, known as Lora Lane Apartments subject to a certain mortgage against such apartment complex which was to be assumed by Sali's principal.

S. Thereafter, one or more of the Partnership partners, but not respondent, entered into an agreement on behalf of the Partnership with one Donald C. Williamson, hereinafter called "Williamson", wherein and whereby the said Williamson agreed to purchase the Lora Lane Apartment complex from the Partnership for an agreed upon consideration.

T. As part of the consideration on his part to perform, Williamson agreed to apply for and secure a first purchase money mortgage loan in the principal sum of \$175,000.00 and with the proceeds thereof discharge and satisfy the existing first mortgage lien against the Lora Lane Apartment complex.

U. The balance of the consideration on Williamson's part consisted of one of the following:

i. The terms and provisions set forth in a contract of sale and purchase dated July 6, 1984, OR

ii. The Partnership would be permitted to transfer certain mortgages under which the Partnership was obligated from realty owned by the Partnership to the Lora Lane Apartment complex in a total aggregate principal amount, the amortization thereof, together with the amortization of the first purchase money mortgage loan secured by Williamson, would equal the net income produced from the Lora Lane Apartment rentals, OR

iii. The Partnership would be permitted to transfer certain mortgages under which the Partnership was obligated from realty owned by the Partnership to the Lora Lane Apartment complex in a total aggregate principal amount, which, together with the first purchase money mortgage secured by Williamson, would equal the appraised value of the Lora Lane Apartment complex, to wit, the sum of \$350,000.00.

V. On November 6, 1984, respondent acting as a Partnership partner, attorney for the Partnership, land trustee for the Partnership and land trustee for Williamson concluded the Blisswood-Partnership-Williamson transaction according to instructions secured by respondent from one or more of the Partnership partners.

W. Acting at the special instance, behest and request of one or more of the Partnership partners respondent concluded the Blisswood-Partnership-Williamson transaction by transferring mortgages under which the Partnership was obligated from other Partnership realty to the Lora Lane Apartment complex in accordance with the terms as recited hereinabove in paragraph U. iii. of this report.

X. Respondent did not either prior to or at the November 6, 1984 closing of the Blisswood-Partnership-Williamson transaction confer with Williamson regarding any of the terms, conditions or details of such transaction.

Y. In fact, Williamson has disputed and continues to dispute that the closing of the Blisswood-Partnership-Williamson transaction took place in accordance with the agreement arrived at between the Partnership and Williamson which dispute is the subject of a civil action pending in the circuit court of the twentieth judicial circuit in and for Lee County, Florida, case number 85-6280-CA entitled Donald Williamson, plaintiff, v. Michael C. Dewberry, John V. Hugill, Hugh Paul Nuckolls and Louis Sali, defendants; John V. Hugill, counter and cross-plaintiff v. Donald Williamson, cross-defendant, and Michael C. Dewberry, Hugh Paul Nuckolls and Louis Sali, cross-defendants.

III. RECOMMENDATIONS AS TO WHETHER OR NOT THE RESPONDENT SHOULD BE FOUND GUILTY:

I make the following recommendations with respect to the violations charged by the bar:

With respect to counts I and II of the bar's complaint, I recommend that respondent be found guilty of violating Disciplinary Rules 1-102(A) (4), 7-102(A) (5) and 7-102(A) (7) of the Code of Professional Responsibility.

With respect to count III of the bar's complaint I recommend that respondent be found guilty of violating Disciplinary Rule 1-102(A) (6) of the Code of Professional Responsibility.

IV. RECOMMENDATIONS AS TO DISCIPLINARY MEASURES TO BE APPLIED:

I recommend that as discipline for the violations hereinabove enumerated respondent be suspended from The Florida Bar for a period of four (4) months.

V. PERSONAL HISTORY:

Respondent was admitted to The Florida Bar on November 13, 1970 and is 67 years of age.

VI. STATEMENT AS TO PAST DISCIPLINE:

Respondent has no prior disciplinary record.

VII. STATEMENT OF COSTS OF THE PROCEEDING AND RECOMMENDATIONS:

The costs of these proceedings were as follows:

Administrative Costs:

Grievance Committee Level -----	\$ 150.00
Referee Level -----	150.00

Court Reporter Costs:

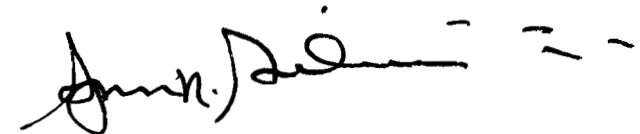
Grievance Committee Level -----	3,158.30
Referee Level -----	1,543.88

Photocopies -----	<u>150.00</u>
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<u>TOTAL</u> -----	\$ 5,152.18
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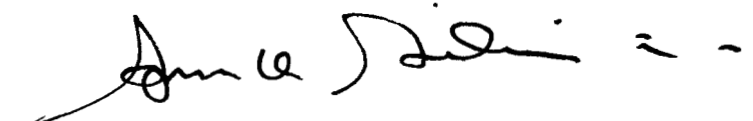
I recommend that such costs be taxed against the respondent.

RENDERED this _____ day of May, 1987 at Sarasota, Sarasota County,
Florida.


LYNN N. SILVERTOOTH, REFEREE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing report of referee was furnished to David M. Barnovitz, bar counsel, The Florida Bar, 915 Middle River Drive, Suite 602, Ft. Lauderdale, FL 33304 to Harry A. Blair, Esquire 2138-40 Hoople Street, Post Office Box 1467, Fort Myers, FL 33902 and to Marilyn Miller, Esquire, 2138-40 Hoople Street, Post Office Box 1467, Fort Myers, FL 33902 this 22 day of May, 1987 by regular mail.


LYNN N. SILVERTOOTH, REFEREE

IN THE SUPREME COURT OF FLORIDA
BEFORE A REFEREE

THE FLORIDA BAR,

Complainant,

TFB File No. 20A86F67

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HUGH PAUL NUCKOLLS,

Respondent.

AFFIDAVIT OF COSTS

STATE OF FLORIDA)
) S.S.
COUNTY OF BROWARD)

David M. Barnovitz, being duly sworn, deposes and says:

1. I am bar counsel in the above matter, have personal knowledge of the facts hereinafter set forth and make this affidavit to establish the costs of the proceeding.

2. Pursuant to Rule 3-7.5(k) (1), Rules of Discipline, a referee's report shall include a statement of costs of the proceedings and recommendations as to the manner in which costs should be taxed. The costs specifically provided for by virtue of such rule include court reporter's fees, copy costs and administrative costs of \$150.00 each for the grievance committee level and referee level.

3. I report to the referee that the bar incurred the following costs in this proceeding:

Administrative Costs:

Grievance Committee Level -----	\$ 150.00
Referee Level -----	150.00


Court Reporter Costs:

Grievance Committee Level -----	3,158.30
Referee Level -----	1,543.88
Photocopies -----	<u>150.00</u>

TOTAL ----- \$ 5,152.18


DAVID M. BARNOVITZ

Sworn to before me this 14th day of May, 1987.


NOTARY PUBLIC
State of Florida at Large

My commission expires:

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. OCT 31, 1989
BONDED THRU GENERAL INS. UND.