IN THE SUPREME COURT OF FLORIDA
BEFORE A REFEREE

THE FLORIDA BAR,

Complainant,

v.

JAMES H. HARDMAN,

Respondent.
_____/

Supreme Court Case Nos.
69,934 and 69,988

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

The undersigned was appointed as the referee to preside in disciplinary action 69,934 by order of this court dated February 3, 1987 and in disciplinary action 69,988 by order of this court dated February 2, 1987. The pleadings, notices, motions, orders and transcripts, all of which are forwarded to the court with this report, constitute the entire record in this case.

The respondent failed to respond to the bar's requests for admissions and defaulted at every stage of the disciplinary proceeding. Despite the fact that respondent had abandoned his practice and left the jurisdiction without notifying The Florida Bar of his whereabouts, the bar, in its zeal to insure that respondent had notice of these very serious proceedings, engaged the services of its investigators and located respondent at Georgia thereby putting respondent on actual notice. Upon the bar's application for judgment on the pleadings due to respondent's default in responding to the requests for admissions, I determined to grant the bar's application, but, at the bar's own suggestion, bifurcated the issues regarding appropriate discipline to be imposed in order to afford to respondent an opportunity to appear before me and present any evidence he might have regarding such issue. My order granting the bar's application for judgment on the pleadings and bifurcating the discipline issue, as aforesaid, is dated May 21, 1987. I caused copies thereof to be mailed to respondent and to bar counsel. It fixed the date of the final hearing for June 19, 1987 at 2:00 p.m. Respondent was thereby afforded approximately one (1) month within which to prepare for the final hearing by filing any pleadings or applications and/or securing representation if he so chose.

Respondent appeared, pro se, at the final hearing. He made no filings prior thereto and had no written submission of any type, nature or description upon his personal appearance. Rather, he, for the first time, upon appearing at the final hearing, made an oral application for a continuance for the purpose of securing representation and for presenting certain alleged mitigating evidence. In order to aid me in determining whether or not to grant respondent's application I engaged in extensive colloquy with respondent in an attempt to ascertain the thrust and scope of his proposed position. As appears from the transcript of the final hearing filed herewith, the nature of respondent's claim of mitigation is that he has embarked upon a plan of rehabilitation from drug abuse which respondent claims was responsible for the very serious defalcations charged in the bar's complaints. Respondent claimed to have been free of his addiction for the immediate last past six (6) months but could offer no reason for failing to notify the bar of his whereabouts, make inquiry of the bar regarding the pendency of any disciplinary proceedings in light of the very substantial violations he committed or to file any applications with me after receiving actual notice of the pendency of these proceedings. The entire basis of respondent's appeal for leniency is based upon his preliminary consultation with Florida Lawyers' Assistance, Inc., his determination to rid himself of his drug habit and to return to a productive life.

Upon due deliberation I do not believe that respondent has established a sufficient predicate to warrant the continuance he sought and therefore deny his application. In so doing, I, in no measure, wish to dissuade respondent from his efforts at rehabilitation which is a laudatory goal. Nor am I unmindful of the fact that under certain circumstances, a respondent's addiction and subsequent rehabilitation have warranted imposition of lesser discipline than might otherwise be imposed. In this case, however, it is respondent's intentions, not his deeds, which he urges as grounds for a discipline recommendation less than disbarment. Here, despite respondent's alleged sobriety for the last six (6) months he made no attempt to seek the services of Florida Lawyers' Assistance, Inc. or to participate in these proceedings until

the last second when literally dragged into the arena through the efforts of the bar. His preliminary meeting with Florida Lawyers' Assistance, Inc. did not occur until the eve of the final hearing. His actions regarding rehabilitation are prospective and speculative. It is in light of the foregoing that I have concluded these proceedings and render the following report and recommendations.

The bar was represented throughout these proceedings by David M. Barnovitz, Esquire. Respondent appeared, pro se, at the final hearing regarding discipline.

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

Case No. 69,934

A. With respect to all counts charged by the bar in its complaint in case 69,934, I find that 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.

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

B. On September 4, 1985 respondent, pursuant to a written agreement subscribed by him, had entrusted to him as an escrow agent the sum of $530.00 which money respondent agreed to retain and to pay the same over upon the happening of a certain condition.

C. Notwithstanding the happening of the condition hereinabove referred to respondent has failed and refused to turn over the money entrusted to and accepted by him or to account for the same despite due demand therefor.

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

D. Heretofore, in or about the latter part of 1984 or the beginning of 1985 respondent retained Charles T. Barker, Esquire, a Florida attorney (hereinafter called Barker) to perform certain legal services including the drafting and preparation of a profit sharing plan and related services, for Mortemore Insurance Company (hereinafter called Mortemore), one of respondent's clients.

E. Barker rendered the services for which he was retained and billed respondent therefor in the total sum of $1,110.22.

F. Respondent received the sum of $1,110.22 from Mortemore for the specific purpose of paying such sum to Barker but failed and refused to pay the same to Barker despite due demand therefor, converting such sum to his own use and purposes.

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

G. Heretofore, respondent was retained by one Robert G. Davis (hereinafter called "Davis") in connection with the defense of a certain action brought in the County Court in and for Broward County, Florida entitled Frank W. Buhrmaster, plaintiff v. Robert G. Davis, d/b/a Davis Insurance Company, defendant, case number 84-2890CCH.

H. Respondent neglected to inform Davis of the date set for the final hearing in the above entitled action and failed to attend such final hearing resulting in the entry of a default judgment against Davis in the sum of $4,033.05.

I. Upon discovery by Davis of respondent's neglect to attend the final hearing, as aforesaid, and the resultant judgment, respondent represented to Davis that respondent had filed a motion to vacate the default judgment and for a rehearing.

J. In fact, respondent made no motion to vacate and for a rehearing.

K. Respondent thereafter entered into a written agreement dated May 6, 1986 wherein and whereby respondent agreed to pay to Davis the sum of $4,908.00 in certain installments enumerated in such agreement and to pay to Davis the sum of $250.00 upon execution of such agreement.

L. Respondent paid the $250.00, aforesaid, by a check which was returned for insufficient funds and made two (2) installment payments called for by the agreement, both such installment payments being made by check and both such check being returned for insufficient funds.

M. Respondent thereafter abandoned his record bar address and has secreted himself from Davis, his other clients and from The Florida Bar.

Case 69,988

N. With respect to each count alleged by the bar in case 69,988, I find that 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.

O. In March of 1985, respondent was retained by Emily Soncini and Mike Betancourt to resolve a matter concerning Melba Pope Interiors. Ms. Soncini had previously given Melba Pope Interiors a deposit of $2,000.00 and Mr. Betancourt had given them a deposit of $1,600.00 on some merchandise they planned to purchase. Neither Ms. Soncini nor Mr. Betancourt received their merchandise or their deposits back. Respondent was instructed to recover them.

P. Both Ms. Soncini and Mr. Betancourt paid respondent a retainer fee of $300.00 each.

Q. Approximately two months later, respondent contacted them and requested an additional $68.00 to cover filing costs. Respondent then went to Ms. Soncini's place of employment where she gave him $68.00. Shortly thereafter, Ms. Soncini contacted respondent about the progress of the case. He assured her that everything was being taken care of and that it would take some time.

R. In September 1985, Ms. Soncini paid respondent an additional $200.00 to handle two other separate matters for her. During this time, respondent again assured her that he had filed against Melba Pope Interiors when in fact he had not filed then or to this day.

S. Over the next several months, Ms. Soncini requested that respondent send her any material pertaining to her case. Respondent agreed to send her the material, but has neglected to do so.

T. Sometime after September 1985, respondent closed his law practice in Boca Raton and moved to Stuart, Florida without notifying Ms. Soncini. After discovering that respondent had relocated and where, Ms. Soncini tried to contact respondent by telephone and letter several times without success.

U. Ms. Soncini received no responses from respondent until early March, 1986, when he returned the $300.00 retainer fee he had originally charged her at her request. Ms. Soncini then telephoned respondent to remind him of the other $268.00 he had retained in unearned fees and costs. Respondent has failed to return these monies to her.

V. Respondent neglected to pursue or resolve this matter entrusted to him by Ms. Soncini and has failed to return all unearned fees, costs and materials to her.

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

W. In mid September of 1985, respondent began working on a retainer basis for the Economic Council of Martin County as executive director. In January of 1986, the president of the counsel, Erling Speer, began receiving complaints that respondent was not keeping appointments with members of the organization, did not attend meetings timely and was unresponsive to the needs of the organization.

X. Respondent became a full time employee of the council in March of 1986. However, he was put on 90 days probation.

Y. Several weeks later it was discovered that respondent was keeping the association checkbook locked up in his desk drawer and a review was conducted by the treasurer. It was then discovered that respondent had overpaid himself approximately $1,900.00. The council then requested that he submit his resignation which he did on May 22, 1986.

Z. An audit was performed on all council books and records as a result of which it was discovered that checks for annual membership dues of $1,500.00 from seven members had never been deposited into accounts maintained by the council. The checks had been endorsed by respondent for deposit only into his personal account with Florida National Bank. The audit also revealed that respondent had charged and paid from the funds of the council expenses for flowers sent to personal friends totaling $45.93, had received a refund of $132.25 from the American Telephone and Telegraph Company for the return of a speaker phone which belonged to the council, and that during the months of May and June of 1986 he charged personal long distance telephone calls to the council in the amount of $205.55. Respondent had also been advanced rent money and given a small loan, both of which he never repaid. Respondent therefore took some $12,783.73, including the $1,900.00 he overpaid himself, from the Economic Council of Martin County for his own personal use without authorization or permission and not including the loan and the rent advance.

AA. Respondent has failed to pay back to the council any of the funds he misappropriated.

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

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

Case No. 69,934

With respect to count I of the bar's complaint in the above referenced case, I recommend that the respondent be found guilty of violating Fla. Bar Integr. Rule, article XI, Rule 11.02(4)

With respect to count II of the bar's complaint in the above referenced case, I recommend that the respondent be found guilty of violating Fla. Bar Integr. Rule, article XI, Rules 11.02(3)(a) and 11.02(4) and Disciplinary Rules 1-102(A)(4) and 1-102(A)(6) of the Code of Professional Responsibility.

With respect to count III of the bar's complaint in the above referenced case, I recommend that respondent be found guilty of violating Fla. Bar Integr. Rule, article XI, Rule 11.02(3)(a) and Disciplinary Rules 1-102(A)(4), 1-102(A)(6) and 6-101(A)(3) of the Code of Professional Responsibility.

Case No. 69,988

With respect to count I of the bar's complaint in the above referenced case, I recommend that the respondent be found guilty of violating Fla. Bar Integr. Rule, article XI, Rule 11.02(3)(a) and Disciplinary Rules 1-102(A)(4), 1-102(A)(6), 2-110(A)(2), 6-101(A)(3), 7-101(A)(1), 7-101(A)(2) and 7-102(A)(3) of the Code of Professional Responsibility.

With respect to count II of the bar's complaint in the above referenced case, I recommend that the respondent be found guilty of violating Fla. Bar Integr. Rule, article XI, Rule 11.02(3)(a) and Disciplinary Rules 1-102(A)(3), 1-102(A)(4) and 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 disbarred from the practice of law.

V. PERSONAL HISTORY:

Respondent was admitted to The Florida Bar on December 2, 1982 and is 37 years of age.

VI. STATEMENT AS TO PAST DISCIPLINE:

Respondent has no prior disciplinary history.

VII. STATEMENT OF COSTS OF THE PROCEEDINGS AND RECOMMENDATIONS:

Administrative Costs:	
Referee Level	$ 150.00
Grievance Level	300.00
Court Reporter Costs:	
Referee Level	241.25
Grievance Level	639.54
Investigative Costs	86.46
Employee Travel	30.62
TOTAL	$ 1,447.87

I recommend that the costs be taxed against the respondent.

Rendered this 6 day of July, 1987, at Fort Lauderdale, Broward County, Florida.

Robert C Abel Jr.

ROBERT C. ABEL JR., REFEREE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing report of referee was sent to James H. Hardman, respondent, 220 N.E. 2nd Circle, Boca Raton, FL 33431 and to David M. Barnovitz, bar counsel, The Florida Bar, 915 Middle River Drive, Suite 602, Ft. Lauderdale, FL 33304 by regular mail on this 6 day of July, 1987.

Robert C Abel

ROBERT C. ABEL JR., REFEREE