

IN THE SUPREME COURT OF FLORIDA

(Before a Referee)

THE FLORIDA BAR)	CONFIDENTIAL
Complainant)	
vs.)	TFB FILE 15E86F40
KEITH SELDIN)	
Respondent)	SUPREME COURT #69,956

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS: Pursuant to the undersigned being duly appointed as Referee to conduct disciplinary proceedings herein and submit findings of fact and recommendations as provided in Rule 3-7.5(K) regulating The Florida Bar, hearing was held on August 10, 1987 with receipt of the hearing transcript on September 23, 1987. The pleadings, notices, motions, orders, transcripts and exhibits, all of which are forwarded to the Supreme Court of Florida with this report, constitute the record in this case.

The following attorneys appeared as counsel for the parties:

for the Florida Bar

David M Barnovitz
915 Middle River Drive
Fort Lauderdale FL 33304
Telephone 305/564-3944

for the Respondent

John Latona & William Isenberg
2888 East Oakland Park Blvd.
Fort Lauderdale FL

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

(a) That the Respondent admits to count I of the Bar's allegations that he, while serving in 1983 as counsel for the personal representative for the estate of Stephenson,

did pay a finder's fee of \$10,000 to his then friend (present wife) Betty Boneparth, a real estate salesperson with broker Fidelity, from the sale proceeds of an estate owned real estate parcel. The sales contract approved and executed by Respondent provided that the seller "recognizes NONE as the broker" (Bar's exhibit #3). Respondent further admitted to advising the personal representative so as to avoid any possible broker's commission to a broker, Town & Country, with whom decedent had listed the said parcel for sale to pay the said finder's fee in a lesser amount to Boneparth.

(b) Respondent through his counsel "basically stated" (T pg.13 line 18-23) that Respondent "saw to it a commission or compensation was paid directly to a non-broker. Thus, cutting out either one or two brokers of the commission they were legally entitled to receive and that constitutes a violation of the Florida Criminal Statutes" and which he admits to being "a serious charge" (T pg.14 line10).

As to Count 2

(c) The Bar alleges in Count 2 that Boneparth played no part in procuring the purchaser for sale of the Stephenson estate property which was known by Respondent when he made the aforementioned \$10,000 finder's fee to Boneparth. Such conduct the Bar alleges to be in violation of Florida Bar Integration Rule, Article XI, Rule 11.02(3) which prohibits conduct contrary to honesty, justice or good morals and additionally violated Disciplinary Rule 1-102(A)(4) of the Code of Professional Responsibility which prohibits an attorney from engaging in conduct constituting dishonesty, deceit, fraud or misrepresentation.

(d) Respondent has partly denied Count 2 by disputing the allegation that Boneparth played no part in procuring the purchaser for said estate property. Respondent affirmatively states and denies with respect to the \$10,000 finder's fee

to Boneparth that "he used it as a way to get it for himself to the detriment of the estate" (T pg.14 line 22); however Count 2 makes no charge in that regard.

(e) The testimony was clear and convincing that Bonesparth played no part in procuring the purchaser or in any way involved that would justify a real estate commission or finder's fee of \$10,000. Boneparth's participation was merely to show to the purchaser the aforementioned real estate parcel at the request of Respondent who was approached by the purchaser for a showing of the property.

As to Count 3

(f) Respondent as a notary public admits his guilt as to Count 3 by taking the acknowledgment of the signature of the personal representative, Kathy Mills, of the Stephenson estate outside her presence, on two conveyance deeds of different dates. Such conduct alleges a violation of F.S.117.09(1) whereby there has been a violation of Florida Bar Integration Rule, Article XI, Rule 11.02(3) which prohibits any act contrary to honesty, justice or good morals and Disciplinary Rule 7-102(A)(8) of the Code of Professional Responsibility which prohibits illegal conduct.

As to Count 4

(g) The Bar alleges and Respondent admits a violation of Disciplinary Rule 5-105(B) of the Code of Professional Responsibility which provides that a lawyer shall not continue multiple employment where a client will or is likely to be adversely affected.

(h) The conduct herein involved related to Respondent requesting and obtaining from the Stephenson estate personal representative \$3621.35 for the purpose of paying an estate indebtedness allegedly owing to Setterfield, a pending matrimonial client of respondent. Setterfield never did receive said money. At the time of said request Setterfield had not filed any claim against the estate and respondent had not fully disclosed to the personal representative the effect of his representation

of both Setterfield and the Stephenson estate.

As to Count 5

(i) The thrust of the Bar's complaint is that the Respondent futhered his own financial and/or personal interests by making the aforementioned \$10,000 payment to Boneparth at a time when they were married in violation of Disciplinary Rule 5-101(A) of the Code of Professional Responsibility.

(j) Respondent testified with respect to the \$10,000 payment "certainly it was given to her but I did get the benefits because we were married"(T pg.38 lines 15-17).

(k) Respondent by way of explanation to Count 5 asserts a factual dispute as to whether Boneparth played a part in procuring the purchaser of the subject real estate. As previously determined in paragraph (e) Boneparth's participation does not justify Respondent's actions.

III. RECOMMENDATIONS 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 1

I recommend that the Respondent be found guilty and specifically that he be found guilty of violating the following:

(1) Florida Bar Integration Rule, Article XI, Rule 11.02(3) which proscribes any act contrary to honesty, justice or good morals.

(m) Disciplinary Rule 1-102(A)(4) of the Code of Professional Responsibility which prohibits conduct constituting dishonesty, fraud, deceit or misrepresentation

(n) Disciplinary Rule 7-102(A)(7) of the Code of Professional Responsibility which prohibits an attorney from counseling or assisting his client in conduct the lawyer knows to be illegal or fraudulent.

(o) Disciplinary Rule 7-102(A)(8) of the Code of Professional Responsibility which prohibits attorney from knowingly engaging in illegal conduct or conduct contrary to a disciplinary rule.

As to Count 2

I recommend that the Respondent be found guilty and specifically that he be found guilty of the following:

(p) Florida Bar Integration Rule, Article XI, Rule 11.02(3) which prohibits conduct contrary to honesty, justice or good morals.

(q) Disciplinary Rule 1-102(A)(4) of the Code of Professional Responsibility which prohibits conduct constituting dishonesty, deceit, fraud or misrepresentation.

As to Count 3

I recommend that the Respondent be found guilty and specifically that he be found guilty of the following:

(r) Florida Bar Integration Rule, Article XI, Rule 11.02(3) which prohibits any act contrary to honesty, justice or good morals.

(s) Disciplinary Rule 7-102(A)(8) of the Code of Professional Responsibility which prohibits illegal conduct.

As to Count 4

I recommend that the Respondent be found guilty and specifically that he be found guilty of the following:

(t) Disciplinary Rule 5-105(B) of the Code of Professional Responsibility which provides that a lawyer shall not continue multiple employment if the exercise of his independent professional judgment is likely to be adversely affected.

As to Count 5

I recommend that the Respondent be found guilty and specifically that he be found guilty of the following:

(u) Disciplinary Rule 5-101(A) of the Code of Professional Responsibility which prohibits, without client consent, employment if the exercise of attorney's professional judgment will be or reasonably may be affected by his own financial or personal interests.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURE TO BE APPLIED:

I recommend that the Respondent be suspended from the practice of law for a period of one year and thereafter until he shall prove his rehabilitation and for an indefinite period until he shall pay the cost of this proceeding and make restitution to his client, the estate of Robert A. Stephenson, in the amount of \$10,000 and also attain a passing score on the ethics portion of the Florida Bar exam as provided in former Rule 11.10(4) and presently Rule 3-5.1(e) of the rules regulating the Florida Bar.

This Referee is mindful of the Bar's recommendation for disbarment; however, I feel in view of the Respondent's absence of any adverse conduct prior to or subsequent to the conduct involving the Stephenson estate, as well as the favorable recommendations from civic leaders in his community and the Respondent's own civic leadership endeavors subsequent to the conduct here complained of, disbarment would be too harsh and punitive. Further considered by this Referee as impressionable was the Respondent's believable sincerity in admitting his wrongdoing, the seriousness of same and his remorseful and cooperative attitude.

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD:

Age 37
Date admitted to Bar: 1979 Florida and 1977 New York
Prior disciplinary convictions and disciplinary measures imposed therein: None
Other personal data: Married November 26, 1983 to Boneparth, one month before real estate closing involving \$10,000 payment.
One child from present marriage.

VI. STATEMENT OF COSTS AND MANNER IN WHICH COST SHOULD BE TAXED:

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

A. Grievance Committee level costs:

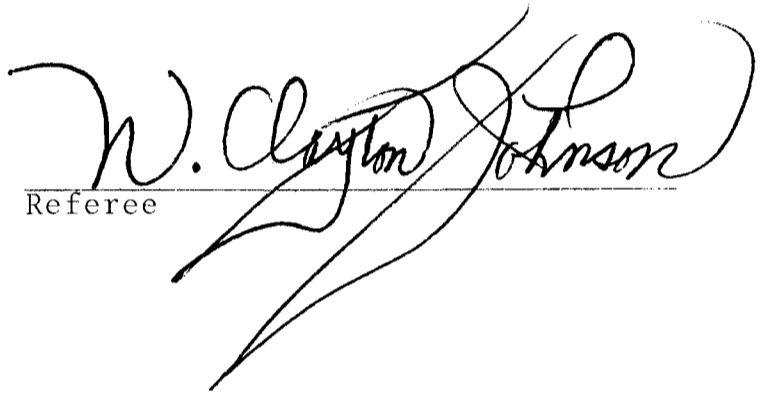
1. Administrative costs	\$150.00
2. Transcript & Court Reporter	448.10
3. Copy costs	2.00

B. Referee level costs:

- | | |
|--------------------------------|---------------|
| 1. Administrative costs | \$ 150.00 |
| 2. Transcript & court reporter | <u>760.00</u> |
| Total itemized costs | \$1510.10 |

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 October, 1987.


Referee