

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,  
Complainant,

v.

CASE NO. 70,040  
(TFB No. 18C86C33)

FRANK CLARK, III,  
Respondent.

FILED  
JUN 15 1987

JUN 15 1987

CLERK, SUPREME COURT

REPORT OF REFEREE By

Deputy Clerk

- I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Article XI of the Integration Rule of The Florida Bar, a hearing was held on May 19, 1987, in Orlando, Florida. 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 persons appeared at the hearing:
- For The Florida Bar: John B. Root, Jr., Esquire  
No one appeared for the Respondent, Frank Clark, III.
- II. Findings of Fact as to the Items of Misconduct with 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 ALL COUNTS

1. The Respondent, FRANK CLARK, III, 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. Although this Referee is uncertain as to the Respondent's residence or business address, the last address registered with The Florida Bar was in Brevard County, Florida.
3. In the first week in July, 1985, Lois Resch, a single woman, entered into a contract to buy a condominium located in Brevard County, Florida, from Angela Kenney and Ronald A. Kenney, her husband. She agreed to pay Mr. and Mrs. Kenney \$56,000.00

for the condominium, and further agreed to assume a first mortgage with an approximate principal balance of \$23,479.20 and a second mortgage with an approximate principal balance of \$15,000.00.

On July 8, 1985, Ms. Resch appeared at the office of the Respondent, located at 696 Eau Gallie Boulevard, Indian Harbor Beach, Florida, to participate in a real estate closing for the condominium property. Ms. Resch did not retain an attorney to represent her. She apparently assumed that the Respondent would be representing both her and the Kenneys at the sale.

4. Mr. Clerk, the Respondent, did nothing to discourage Ms. Resch from thinking that he represented both the buyer and seller at this transaction. In fact, he charged each of the parties one-half of the attorney's fee that he imposed for the transaction. See the closing statement prepared by the Respondent, a copy of which is part of the record herein, marked Bar Exhibit 4.

Among the closing documents prepared by the Respondent were forms that Ms. Resch signed, by which she assumed the two mortgages which were pre-existing.

5. When she received payment books for the mortgages, Mrs. Resch noted that several of the coupons for the first mortgage had already been made out to be paid in the name of the Kenneys. She was instructed at the closing to not alter the coupons or contact the mortgage company. The testimony is unclear whether these directions came from the Respondent or the Kenneys.

The Respondent did not communicate with the mortgage companies prior to the closing and did not request an estoppel letter on either of the mortgages.

6. After the closing Mrs. Resch discovered that, in fact, neither of the mortgages was assumable. The effect of this development was that Ms. Resch was to take out a new mortgage to retire the existing mortgages. The new mortgage was at a much higher rate of interest than existed on the first

mortgage. This resulted in Ms. Resch having to pay much more money for the transaction than she had originally anticipated and been led to believe that she would have to pay pursuant to the agreement between the parties.

7. There is no evidence that the Respondent ever took any action to attempt to remedy the problem which was apparently created, in part, by his total lack of communication with the pre-existing mortgage holders.

III. Recommendations as to whether or Not the Respondent should be Found Guilty: I recommend that the Respondent be found guilty and specifically that he be found guilty of violating the following Disciplinary Rules of The Florida Bar's Code of Professional Responsibility:

1. 5-105 A for accepting proffered employment when it will or is likely to adversely affect his representation of another client.

2. 5-105 B for continuing multiple employment when his independent professional judgment in behalf of a client will be or is likely to be adversely affected.

3. 6-101 (A) (2) for handling a matter without adequate preparation.

4. 6-101 (A) (3) for neglect of a legal matter entrusted to him.

IV. Personal History and Past Disciplinary Record: After finding the Respondent to be guilty of violation of the indicated Disciplinary Rules, and prior to recommending a discipline to be imposed, I considered that the Respondent was admitted to The Florida Bar in 1959. He subsequently received at least two private reprimands arising out of his conduct as a member of The Bar. In 1975, he was suspended from the practice of law following his conviction of a felony offense of unlawfully wilfully, and knowingly transporting in interstate commerce a diamond ring, knowing that the ring had been stolen, converted or taken by fraud in violation of The United States Code. The physical whereabouts of the Respondent are presently unknown and he has not appeared in these proceedings, either personally or by counsel.

IV. Recommendation as to Disciplinary Measures to be Applied:

I recommend that the Respondent be disbarred from the practice of law in this state.

V. Statement of Costs and Manner in which Costs Should be Taxed:

The costs incurred in this case to date are as follows:

A. Grievance Committee Level Costs:

1. Administrative Costs	\$150.00
2. Transcript Costs	171.00
3. Bar Counsel/Branch Staff Counsel Travel Costs	54.35
4. Investigator's Expenses	43.71

B. Referee Level Costs

1. Administrative Costs	\$150.00
2. Transcript Costs	103.15


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TOTAL ITEMIZED COSTS: \$672.21

Other costs might be incurred before this case is concluded.


It is recommended that all such costs be charged to the Respondent and that interest at the statutory rate accrue and be payable beginning thirty days after the judgment in this case becomes final unless a waiver is granted by the Board of Governors of The Florida Bar.

DATED at Orlando, Orange County, Florida, this 10th day of June, 1987.

  
TED P. COLEMAN, Referee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing Report of Referee were furnished by U. S. mail to John Root, Esquire, Bar Counsel, 605 E. Robinson Street, Suite 610, Orlando, Florida, 32801 and Frank Clark III, 216 Emerald Drive N., Indian Harbor Beach, Florida 32937; Frank Clark, III, c/o Lawrence Litus, 592 Montreal Avenue, Melbourne, Florida 32934; Frank Clark, III, Post Office Box EG 1487, Melbourne, Florida 32935; Frank Clark III, Unit 26, 325 E. University Boulevard, Melbourne, Florida 32934; Frank Clark, III, 696 East Eau Gaulle Boulevard, Indian Harbor Beach, Florida 32937; and to Staff Counsel, The Florida Bar, Tallahassee, Florida 32301, this 10th day of June, 1987.

  
Dorothy Richardson