

IN THE SUPREME COURT OF FLORIDA
BEFORE A REFEREE

THE FLORIDA BAR,
Complainant,

v.

GARY L. SPARKS,
Respondent.


TFB File Nos.
20A87F08, 20A87F23,
20A87F32, 20A87F33,
20A87F39, 20A87F62,
20A87F63.

FILED

SID J. WHITE

JUN 18 1987

CLERK, SUPREME COURT

By 
Deputy Clerk

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

The undersigned was appointed as the referee to preside in the above entitled disciplinary action by order of this court dated February 17, 1987. The pleadings, notices, motions, orders, and transcript, all of which are forwarded to the court with this report, constitute the entire record in this case.

The respondent failed to appear and defaulted at every stage of the proceeding. The bar was represented by David M. Barnovitz, Esquire. Upon respondent's default and the application of the bar for judgment on the pleadings I granted the bar's application and render the following report.

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 as follows:

A. With respect to each and every count 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, I find:

B. On or about January 22, 1986, respondent received, in trust, on behalf of his client, Stanley Kazwell (hereinafter called "Kazwell") the sum of \$83,797.26 for the specific purpose of applying such funds to certain business transactions contemplated by Kazwell which funds respondent deposited to his clients' trust account #2012294 maintained at Flagship Bank of Charlotte County.

C. Between February 10, 1986 and May 5, 1986, respondent disbursed from the funds entrusted to him by Kazwell \$50,700.28 leaving a balance of \$33,096.98 for which respondent was responsible.

D. On July 21, 1986, respondent, representing Kazwell in connection with a certain real estate exchange transaction in which Kazwell owed a balance of \$32,310.70 to a party named Van Gucht, drew a trust account check in such amount payable to Van Gucht's attorneys which trust account check, after being deposited by Van Gucht's attorneys, was returned for insufficient funds.

E. In fact, on July 21, 1986, due to application by respondent of the Kazwell funds to purposes other than those for which the funds were entrusted to him, including payments to himself totalling \$14,436.00, respondent held a trust account balance on behalf of Kazwell in the sum of \$5,003.28 constituting a deficiency of \$28,093.70.

F. On July 21, 1986 respondent held a total balance in his clients' trust account in the sum of \$8,908.28 consisting of the \$5,003.28 Kazwell balance and \$3,905.00 received in trust by respondent on behalf of Paul H. Kimmel and Gloria H. Kimmel (hereinafter called "Kimmel"), other clients of respondent.

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

A. On or about July 21, 1986 respondent, representing the Kimmels in connection with a sale by the Kimmels of certain realty, received from the purchaser thereof the sum of \$3,905.00 and deposited the same to his clients' trust account on July 23, 1986.

B. Respondent thereafter disbursed the entire \$3,905.00 entrusted to him on behalf of his clients, Kimmel, to purposes other than those for which such funds were entrusted to respondent.

C. Respondent has failed and refused to pay to the Kimmels as requested by them the funds entrusted to respondent or any part thereof.

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

A. Despite having applied all of the \$3,905.00 entrusted to him on behalf of his clients, Kimmel, to purposes other than those for which such sum was so entrusted to him, respondent, on August 26, 1986 issued two (2) trust account checks, each in the sum of \$200.00 delivering one to the listing real estate broker and one to the selling real estate broker responsible for bringing about the Kimmel sale.

B. Having previously disbursed all of the Kimmel sale proceeds and having a balance of less than \$200.00 in his trust account when he issued both of the checks hereinabove specified, both such checks were returned for insufficient funds.

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

A. Respondent failed to maintain complete records of the funds coming into his possession on behalf of his clients, Kazwell and Kimmel and failed to render appropriate accounts to the Kazwells and Kimmels regarding such funds.

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

A. Since January 1, 1985 and upon information and belief, prior thereto, respondent has not complied with the trust accounting procedures as prescribed by Fla. Bar Integr. Rule By-laws with respect to his clients' trust account #2012294 maintained by him at Flagship Bank of Charlotte County, as follows:

i. He has failed to perform and maintain trust account balance reconciliations as required by Fla. Bar Integr. Rule By-laws, article XI, Section 11.02(4) (c) (3) (a) (ii).

ii. Respondent has failed to maintain individual client ledger cards properly reflecting all individual receipts, disbursements and unexpended balances as required by Fla. Bar Integr. Rule By-laws, article XI, Section 11.02(4) (c) (2) (f).

iii. He has failed to issue a written authorization to the Flagship Bank of Charlotte County now known as Florida National Bank permitting the bank to notify The Florida Bar of the occurrence of any trust account check dishonored due to insufficient or uncollected funds as required by Fla. Bar Integr. Rule By-laws, article XI, Section 11.02(4) (c) (3) (d).

iv. Respondent has labeled his trust account as "Escrow Account" instead of "Trust Account" the designation required by Fla. Bar Integr. Rule, article XI, Rule 11.02(4) (a) and as required by Fla. Bar Integr. By-laws, article XI, Section 11.02(4) (c) (2) (a).

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

A. On or about April 4, 1986 respondent undertook representation of Glen S. Dougherty and Opal J. Dougherty (hereinafter called "Dougherty") in connection with the sale by Dougherty of a parcel of realty owned by Dougherty at Punta Gorda, Florida.

B. At respondent's special instance and request Dougherty paid to respondent the sum of \$742.00 which sum included \$325.00 for the issuance of a title insurance policy.

C. Respondent did not deposit the \$742.00 or any part thereof in his clients' trust account.

D. Respondent failed and refused to provide the title insurance policy which he promised to do and has failed and refused to account to Dougherty regarding the payment received for such title insurance policy or to refund such payment despite repeated demand therefor.

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

A. In or about March, 1986 respondent agreed to act for one Watson P. Osenbaugh, a California attorney (hereinafter called "Osenbaugh") by attending to certain post death realty transfers on behalf of two (2) of Osenbaugh's clients.

B. Respondent requested and received from Osenbaugh a retainer of \$150.00.

C. Respondent thereafter neglected to perform any services for which he was retained by Osenbaugh and despite numerous inquiries and requests by Osenbaugh failed and refused to return documents furnished to him by Osenbaugh and failed and refused to refund the \$150.00 received by him from Osenbaugh.

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

A. At various times during 1986 respondent placed orders with Ace Industries, Inc. (hereinafter called "Ace") for corporate kits which kits were supplied by Ace to respondent.

B. Thereafter, despite repeated demands for payment by Ace, respondent failed and refused to pay for the corporate kits he ordered and received until July 18, 1986 when respondent issued a check to the order of Ace for the total amount due and owing to Ace in the sum of \$167.50.

C. Upon receipt of such check Ace deposited the same which was returned to Ace for insufficient funds.

D. At respondent's special instance and request Ace redeposited the subject check which was once again returned to Ace for insufficient funds.

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

With respect to count II of the bar's complaint, I recommend that the respondent be found guilty of violating Disciplinary Rules 1-102(A) (3), 1-102(A) (4), 1-102(A) (6) and 9-102(B) (4) of the Code of Professional Responsibility and Fla. Bar Integr. Rule, article XI, Rules 11.02(3) (a) and 11.02(4).

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

With respect to count IV of the bar's complaint, I recommend that the respondent be found guilty of violating Disciplinary Rule 9-102(B) (3) of the Code of Professional Responsibility.

With respect to count V of the bar's complaint, I recommend that the respondent be found guilty of violating Fla. Bar Integr. Rule, By-laws, article XI, Sections 11.02(4) (c) (3) (a) (ii), 11.02(4) (c) (2) (f), 11.02(4) (c) (3) (d) and 11.02(4) (c) (2) (a) and Fla. Bar Integr. Rule, article XI, Rule 11.02(4) (a).

With respect to count VI of the bar's complaint, I recommend that the respondent be found guilty of violating Disciplinary Rules 1-102(A) (4), 1-102(A) (6), 9-102(B) (3) and 9-102(B) (4) of the Code of Professional Responsibility and Fla. Bar Integr. Rule, article XI, Rule 11.02(4).

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

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

IV. RECOMMENDATIONS AS TO DISCIPLINARY MEASURES TO BE APPLIED:

I recommend that as discipline for the violations hereinabove enumerated respondent be disbarred.

V. PERSONAL HISTORY:

Respondent was admitted to The Florida Bar on September 24, 1979 and is 33 years of age.

VI. STATEMENT AS TO PAST DISCIPLINE:

Respondent was temporarily suspended by virtue of an order entered in The Florida Bar v. Sparks, No. 69,239 (Fla. Sept. 5, 1986). Respondent has no other discipline record.

VII. STATEMENT OF COSTS OF THE PROCEEDING AND RECOMMENDATIONS:

The cost of these proceedings were as follows:

Administrative Costs:

Grievance committee level -----	\$	150.00
Referee level -----		150.00

Court Reporter Costs:

Grievance committee level -----	366.40
Referee level -----	53.60

Florida Bar auditor -----	1,486.56
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Subpoena Service -----	32.40
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Bank records -----	<u>74.45</u>
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<u>TOTAL</u> -----	\$2,313.41
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I recommend that such costs be taxed against the respondent.

RENDERED this 15th day of June, 1987 at Bradenton,
FL.

Gilbert A. Smith
GILBERT A. SMITH, REFEREE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing report of referee was furnished to Gary L. Sparks, respondent, at his official record bar address of 223 Cochran Street, Punta Gorda, FL 33950 and to 223 Malory Street, Port Charlotte, FL 33952 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 15 day of June, 1987.

Gilbert A. Smith
GILBERT A. SMITH, REFEREE