

FILED
SID J. WHITE

AUG 25 1987

CLERK, SUPREME COURT

By
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IN THE SUPREME COURT OF FLORIDA
(Before a Grievance Committee)

THE FLORIDA BAR,

Complainant,

Case No. 70,044
(TFB No. 1986C77)

v.

RONALD P. WHITLEY,

Respondent.

REPORT OF REFEREE

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, and The Rules of Discipline, a hearing was held on June 10, 1987, in Fort Pierce, 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: David G. McGunegle

For the Respondent: In pro se

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:

1. Respondent, Ronald P. Whitley, 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. Respondent resides and practices law in Port St. Lucie, St. Lucie County, Florida.
3. The respondent was retained in 1984 by Wilford Radcliff to assist him in the formation of a corporation, Wil, Inc. and the subsequent purchase by the corporation of a music store owned by his partner, Mr. Steele. Mr. Radcliff wished to purchase his partner's interest in the music store. To raise the necessary funds Mr. Radcliff decided to sell shares of stock in the music store at \$1,000.00 a share and to issue promissory notes which stated that upon repayment of the notes, he would receive all of the shares of stock

back. The stock was apparent collateral for the repayment of the promissory notes.

On August 28, 1984, the Respondent drew up an escrow agreement between himself and Mr. Radcliff stating that he would hold all of the money received toward the purchase of the music store in his trust account until \$75,000.00 (75 Shares) was raised, enabling a closing pursuant to the terms of the agreement. If 75 shares of stock were not sold, the money was to be returned to the investors.

4. In September, 1984, Mr. Radcliff sold \$7,000.00 worth of stock to Mr. and Mrs. Marrocco. The respondent prepared the subscription agreement which clearly reflected the escrow agreement and made it a part of the subscription agreement. The funds were deposited into his trust account. He did not represent them nor give them any advice. Three other individuals invested \$1,000.00 each on the same terms.

5. A total of \$10,000.00 was raised through the sale of stock. On October 17, 1984, Mr. Steele and Mr. Radcliff closed on the purchase and sale of the music store. At that time they changed the original purchase agreement as Mr. Radcliff had only raised \$10,000.00. Pursuant to the new agreement respondent paid over the \$10,000.00 even though the terms of the escrow agreement had not been met.

Respondent admits he released the funds from his trust account with knowledge of the terms of the escrow agreement. Respondent asserts the Marroccos were getting the benefit of their bargain. He did not divulge the altered terms to them or the others prior to disbursement nor advise them of it afterward. I find the Marroccos were unaware of the closing and that respondent had a duty to advise them and the three other investors of the new terms and secure their permission prior to disbursing the funds.

6. In February, 1985, the Marroccos invested another \$42,000.00. They assert they did not realize the escrow agreement had already been violated and Mr. Radcliff had closed on the purchase of the music store. It was their understanding the funds would be placed into the respondent's trust account. However, the funds were disbursed to Mr. Radcliff and Mr. Steele. At no time did the respondent inform them he had previously distributed their \$7,000.00 or that the \$42,000.00 would not remain in his trust account. He asserts they knew. The evidence is not clear and convincing that they were still unaware of the prior closing.

7. In 1985 Mr. Radcliff declared bankruptcy. At that time the Marroccos assert they first discovered their \$49,000.00 had been disbursed from the respondent's trust account. At

no time had they authorized the respondent to disburse these funds. They were subsequently unable to recover their investment.

8. In preparing the various agreements to this transaction, the respondent created a situation wherein his client, Mr. Radcliff, was not properly protected regarding the stock being issued and the investors received assurances which were meaningless regarding the proposed sale which was consummated upon other terms and without their prior knowledge or consent. The promissory notes cited the stock as a collateral which stock was not collateralized nor part of a stock pledge agreement. Further, there was no mechanism to force the return of the stock in the event a shareholder refused after being paid. Mr. Radcliff held 550 shares issued at a much lower value per share creating two classes of common stock not authorized by The Articles of Incorporation. Finally, it was difficult to determine from the structure the respondent created whether the investors were merely loaning money to the corporation for the purchase or whether they were purchasing an interest in the corporation.

III Recommendation 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 Article XI, Rule 11.02(4) of The Florida Bar's Integration Rule for violating the terms of the escrow agreement, and the following Disciplinary Rules of The Florida Bar's Code of Professional Responsibility:

1. 1-102(A)(6) for other misconduct reflecting adversely on his fitness to practice law.
2. 6-101(A)(1) for handling a matter he was not competent to handle under the circumstances.
3. 6-101(A)(2) for handling a matter with inadequate preparation.
4. 9-102(B)(4) for mishandling the trust funds in violation of the escrow agreement.

IV Personal History and Past Disciplinary Record.

After finding the respondent to be guilty of violation of the indicated Integration and Disciplinary Rules, and prior to recommending a discipline be imposed, I considered that the respondent was admitted to The Florida Bar in 1977. He is 39 and married with two minor dependents. He has no

prior disciplinary record. has no prior disciplinary record.
He is 39, married with two minor dependents.

V Recommendation as to Disciplinary Measures to be Applied:

I recommend that the respondent be given a public reprimand pursuant to Rule 3-5.1(d) of The Rules of Discipline by personal appearance before the Board of Governors of The Florida Bar.

VI 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	307.19
3. Bar Counsel Travel Costs	44.20
4. Investigator's Expense	360.00
5. Copies	14.40

B. Referee Level Costs:

1. Administrative Costs	150.00
2. Transcript Costs	426.80
3. Bar Counsel Travel Costs	165.37
4. Investigator's Expense	48.00

C. Miscellaneous Costs:

1. Telephone Charges	3.60
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TOTAL ITEMIZED COSTS \$1,669.46

Other costs may 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 this 18th day of August, 1987.



 Howard H. Harrison, Referee

copies:

- David G. McGunegle, Esq., The Florida Bar, 605 E. Robinson St., Suite 610, Orlando, FL. 32801
- John T. Berry, Esq., The Florida Bar, Tallahassee, FL. 32301
- Roger Orr, Chairman, 220 Second St., Ft. Pierce, FL. 33450
- Ronald P. Whitley, Esq., 2500 S.E. Midport Rd., Suite 470, Port St. Lucie, FL. 33452