

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

vs.

J. ALFREDO ARMAS,

Respondent,

SUPREME COURT CASE NO. 70,374

FLORIDA BAR CASE NO. 11A86M66,
11A86M21, and 11A86M26

FILED

NOV 5 1987

REPORT OF REFEREE

By _____

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 September 30, 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: RANDI KLAYMAN LAZARUS, ESQ.

For the Respondent: ARNALDO VELEZ, ESQ.

II. Findings of Fact as to Each Item of Misconduct of Which 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

Complainant in Count I alleges that Respondent has violated Disciplinary Rule 3-104(c) of the Code of Professional Responsibility, which states that a lawyer who employs non-lawyer personnel shall exercise a high standard of care to assure compliance by the non-lawyer personnel with the applicable provisions of the Code of Professional Responsibility. Further, the initial and the continuing relationship with the client must be the responsibility of the employing attorney.

Testimony at the hearing revealed that during the period from June 1, 1985 to December 1, 1985 Respondent employed as office manager Mr. Ezequiel Delgado who prior to his employment with Respondent had owned and operated a collection agency comprising of mainly hospitals and doctors as customers. Initially, debts that couldn't be collected without litigation were referred to Respondent to initiate legal proceedings. Since the matters being referred were for the most part truly uncollectable, Respondent sought to terminate the relationship or to alter it.

In the interim, Mr. Delgado's business had decreased, so he suggested to the Respondent that he become an employee of Respondent. Mr. Delgado was subsequently retained as office manager and was to act as a collector himself while supervising the other collectors. He also acted as bookkeeper

for the office and had control over trust account deposits and disbursements. It is important to note that Respondent's clients continued to be primarily hospitals and doctors and that a large volume of payments from patients, many of which were very small accounts, were received on a daily basis.

Respondent apparently felt that Mr. Delgado's prior experience in collection matters justified giving him complete control over these matters, even to the extent that Respondent authorized the use of a rubber signature stamp on checks. This degree of reliance on Mr. Delgado turned out to be a costly error.

The report and testimony of Carlos Ruga, Florida Bar auditor, reveals that from June 1, 1985 to December 1, 1985 a total of \$137,647.36 was deposited into Respondent's trust account out of which \$44,290.12 was paid to clients and \$79,882.01 was transferred to Respondent's office account. Costs and bank debits (bad checks) accounted for \$12,445.83. Mr. Ruga concluded that the evidence suggested an absence of employee misappropriations/embezzlement as suggested by Respondent but he further concluded that the subject funds were used primarily to fund office overhead. Respondent makes a strong case at least in part, against the conclusions reached by Mr. Ruga.

Respondent contends that certain monies were collected by Mr. Delgado prior to his employment with the Respondent and deposited into Mr. Delgado's company account. After employment began with Respondent certain clients of Mr. Delgado became clients of Respondent. Certain monies collected for these clients as described above were disbursed from Respondent's trust account by Mr. Delgado even though the collections were never transferred from Mr. Delgado's business account to Respondent's account. This alleged scheme would have occurred between May 1985 and June 1985 and allegedly wasn't discovered by Respondent because new monies coming in were sufficient to cover the amounts being disbursed on Mr. Delgado's old collections. Respondent's limited supervision of Mr. Delgado certainly exacerbated a bad situation.

In addition, certain checks produced at hearing confirm Mr. Delgado's own admissions that while employed by Respondent he continued to deposit debt payments from patients into his old business account rather than into Respondent's trust account. At the time of hearing Respondent was able to show only a few instances where this occurred and only relatively small amounts of money were involved but the referee believes there to have been many more such incidents and recognizes the difficulty of producing such evidence since the payors (hospital's and doctor's patients) for the most part have no reason to bring their cancelled checks to the attention of Respondent and it is the cancelled checks that reveal where the funds were deposited. Mr. Delgado apparently did give the debtors credit against their accounts for the payments he kept.

Eventually, Respondent, through the suggestions of others became aware that something was amiss and had his own audit conducted. When he was certain that there was a problem he made contact with Robert Rosenbloom, Assistant Staff Counsel of the Florida Bar. Although Mr. Rosenbloom was not a witness at Respondent's hearing the evidence suggests that all advice of Mr. Rosenbloom was followed, including voluntarily undergoing a polygraph test which apparently confirmed that there had been no embezzlement/stealing of client funds by Respondent. Respondent fully cooperated with the Florida Bar auditor conducting the audit at the request of Mr. Rosenbloom.

As soon as Respondent confirmed, at least in his mind, that Mr. Delgado may have been involved in the activities previously described he was terminated. Mr. Delgado admitted at the hearing that he removed the last sheet of three blank checks from the back of Respondent's trust account checkbook and issued a check to himself for \$5,000.00. Respondent discovered the missing checks and was able to stop payment before the funds were received by Mr. Delgado. Mr. Delgado further testified that he was entitled to the money for certain equipment left behind with Respondent at the time of his termination. This last hour attempt to wrongfully convert five thousand dollars in Respondent's trust account funds would certainly tend to support Respondent's contention that a good portion of the wrongdoing in the handling of the trust account was conducted by Mr. Delgado.

As to whether or not Respondent had violated Disciplinary Rule 3.104 (C) of Professional Responsibility, the referee must find against Respondent, in that he did indeed fail to exercise a high standard of care to assure compliance by his nonlawyer employee with applicable provisions of said code. However, important mitigating circumstances do exist. Respondent himself approached the Florida Bar for advice when he became aware of a possible problem with his trust accounts; he fully cooperated with the Florida Bar; no clients filed complaints against Respondent and no clients lost any monies owed to them, instead, any shortages were made up by Respondent when he became aware of them.

As to Count II

Complainant in Count II alleges that Respondent has failed to adhere to the required minimum trust accounting procedures and failed to maintain complete trust accounting records in violation of Disciplinary Rules 9-102 (B)(3) (maintaining complete records of all funds, securities and other properties of a client coming into the possession of the lawyer and rendering appropriate accountings to his clients regarding them) and 9-102(B)(4) (promptly paying or delivering to clients as requested by said client, funds, securities, or other properties in possession of the lawyer which the client is entitled to receive). Respondent is further accused of violating Article XI, Rule 11.02(4), Integration Rule of the Florida Bar (monies entrusted to an attorney for a specific purpose is held in trust and must be applied only to the purpose).

The primary accusation of the Florida Bar in its Complaint concerning Count II is that between June 1, 1985 and December 1, 1985 Respondent transferred a total of \$79,882.01 in trust account funds to his office operating account, this is out of a total of \$137,647.36 in total trust account receipts during the same period of time. The Florida Bar contends that the transfer of funds to the operating account and use of said funds for office operations in and of itself is a sign of Respondent's guilt. The referee disagrees.

If the transferred funds represented attorneys fees due and owing to Respondent to be paid from collected funds, then there would be no wrongdoing in a transfer of said funds to Respondent's operating account. However, the referee was at first perplexed by Respondent's claim that the transferred monies were indeed attorneys fees, because the funds transferred represented 60% of the total collections, an unusually high contingent fee arrangement for collection work.

rejects Complainant's call for disbarment and further rejects the idea of suspending Respondent from the practice of law. As explained earlier, when Respondent became aware of the problems involved with his trust account he investigated and upon confirming same, approached the Florida Bar for help and fully cooperated with their investigation. No complaints were filed by Respondent's clients and no monies were lost by his clients.

The referee does, however, recommend a public reprimand. The referee further recommends that Respondent be placed on probation for a period of two years during which time periodic audits (quarterly) of his trust account should be conducted.

Statement of Costs: I find the following costs were reasonably incurred by the Florida Bar

Administrative Costs:

(Rule 3-7.5(K)(1), Rule of Discipline)

Grievance Level	\$150.00
Referee Level	150.00

Court Reporter:

Grievance Committee Hearing	
June 16, 1986	1,154.76
Depositions	103.23
Referee Hearing September 30, 1987 (to be submitted)	

Witness Fees & Subpoena Service	<u>93</u> 27.50
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Costs of Audit	2,214.50
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Total (without court reporter for 9/30/87)	\$3,799.98
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It is recommended that all costs incurred together with the foregoing itemized costs be charged to the respondent, and that interest at the statutory rate accrue and be payable beginning 30 days after the Judgment in this case becomes final.

DATED at Coral Gables, Florida this 30th day of October, 1987



BERNARD S. SHAPIRO
COUNTY COURT JUDGE
Acting as Referee