IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Case No. 70,413
[TFB Case No. 87-23,650(19)]

v.

JEFFREY M. MART,

Respondent.

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the Integration Rule and The Rules Regulating The Florida Bar, final hearing was held on March 8, 1988. 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 G. McGunegle

For The Respondent - Richard D. Kibbey

11. 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 on below, I find:

1. The respondent, Jeffrey M. Mart, is and at all times hereinafter mentioned, was a member of The Florida Bar, subject to the jurisdiction and Rules of Discipline of The Supreme Court of Florida. Respondent resided and practiced law in Martin County, Florida at all times material. Respondent also was a title agent for a Chicago Title Insurance Company during all times material.

2. Respondent has been a licensed attorney in this state for over 14 years, with no prior disciplinary actions. (Note: One prior complaint years ago was unfounded with no

finding of probable cause; therefore, it should not be counted as a disciplinary action).

3. Respondent practiced law as Jeffrey Mart, P.A. and was president of Beacon 21 Development Corporation, (hereinafter Beacon 21) during its last year of existence to mid 1986 in which he had a forty percent ownership share and his father, Gilbert Mart, a sixty percent ownership share. Beacon 21 was a four phase condominium development project in Martin County being developed by Mart Development Corporation which was also owned by the Mart family members and in which respondent had an interest. Respondent moved his practice from Dade County to Martin County in 1984 and concentrated primarily in handling the legal business for the family enterprises which included developing mainly commercial properties.

4. In the beginning of approximately May 1984, and continuing through March 1986, the respondent closed in his capacity as attorney, president of Beacon 21 and as title agent for Chicago Title Insurance Company numerous units in phases one and two of Beacon 21. In those closings, deposits had been paid to him as the escrow agent. Moreover, in each of these closings, respondent or his staff prepared the various legal documents involved including warranty deeds, mortgages, closing statements, no lien affidavits and title insurance policies, none of which disclosed the underlying loans from First Fidelity Savings and Loan which later became The American Pioneer Bank regarding monies loaned for purchase of the development property and construction of the condominium units on phases one and two. A total of $5,259,000.00 had been loaned by American Pioneer. All of those notes and mortgages had been executed by respondent as president of Beacon 21. Each of the mortgages had provisions for partial releases as the condominium units were sold.

5. Trust funds collected from these sales which averaged between $60,000.00 and $70,000.00 were placed in respondent's trust account which was one of several bank accounts comprising the overall trust account. The account was not properly labelled a trust account but had been opened as one. Respondent was the sole signatory on his bank accounts comprising his trust account. Much of the funds placed into the trust account were not contemporaneously used to secure partial releases from American Pioneer Bank. The paydown amount in phase one varied per unit but averaged over $45,000.00 while phase two paydowns totalled $56,800.00 per unit. Instead, respondent

utilized portions if not the majority of these funds for Beacon 21 which had encountered serious cash flow problems due to construction overruns.

6. In early 1986 an American Pioneer official determined that some twenty-nine units had been sold wherein the bank had not received payments. When confronted on January 10, 1986, respondent advised it was a problem with his bookkeeper whom he had terminated. That same day, the bank received payment for seven units reducing the number of unpaid units to twenty-two. However, after the January 10, 1986 meeting, eleven additional units were sold by Beacon 21 and closed by respondent without payments to the bank. The final total was thirty-three units for a total amount of $1,885,400.00 in June 1986.

7. Respondent's attempts to secure alternate financing in 1986 ultimately failed and there were few if any funds left in the trust account to pay the bank the monies owed. During the period in question there was a continuing pattern of funds being diverted to Beacon 21 rather than to the bank as required.

8. Ultimately, Chicago Title purchased the entire loan package from American Pioneer Bank for approximately $3,000,000.00. However, their financial posture is unknown since the project which they now own is still viable with evidence of potential profit.

9. The long time accountant for the Mart Enterprises testified the respondent had not attempted to deceive him regarding financial matters. He also testified respondent's ability to manage business checking accounts or finances was open to question.

10. It appears the financial problems of Beacon 21 were unforeseen, unintended and long range hopes were placed on phases three and four. As a result the trust account became the source of monies for daily obligations of the project.

11. Peripheral and somewhat unrelated matters include:

a. Although in each closing respondent collected sums from each buyer due and payable to Chicago Title for title insurance, he failed to furnish those monies to the company in all instances.

b. In 1984, respondent issued a title insurance policy in connection with a $1,600,000.00 loan from

Intercontinental Bank and failed to disclose a preexisting purchase money mortgage in favor of Mr. George Largay for approximately $100,000.00 which remains unsatisfied.

c. Respondent also secured a $300,000.00 loan from Commonwealth Savings and Loan Association in Miami to Beacon 21 secured by the development's utility plant which the respondent's family owned but was not titled to Beacon 21. Respondent closed the loan and prepared the various representations of warranties to the bank and wrote the appropriate title insurance policy failing to make the disclosure. Moreover, the policy was issued to Commonwealth on March 31, 1986, after Beacon 21 had been placed into Chapter 11 bankruptcy proceedings without disclosure to the lender's attorney. Respondent further borrowed another $300,000.00 from Mega Bank wherein Beacon 21 did not hold good title to the utility property and failed to disclose the fact to the lender through the title policy and other documents he provided. Respondent asserted the underlying title was common knowledge and he issued corrective deeds when the problem became known, and there was no evidence adduced to the contrary.

12. After the problems arose and litigation ensued including criminal charges, which have been resolved, respondent consented to a temporary suspension in February, 1987, which the Supreme Court issued by order dated March 19, 1987. The grievance committee hearing found probable cause on February 11, 1987. In respondent's answer dated May 26, 1987, to the formal complaint, he made substantial admissions of wrongdoing including violating the following rules:

Integration Rules 11.02(3)(a) for conduct contrary to honesty, justice or good morals; 11.02(4) for improperly handling and using trust funds; and 11.02(4)(c) and the accompanying bylaw for improper trust account record keeping; and the following Disciplinary Rules: 1-102(A)(6) for engaging in conduct which reflected adversely on his fitness to practice law; 6-101(A)(3) for neglecting legal matters which were entrusted to him regarding Beacon 21 closings and negligently causing prejudice or damage to his client, Chicago Title, in the course of his professional relationship with it; 9-102(B)(1) for failing to properly notify his client, Chicago Title, of receipt of funds; 9-102(B)(3) for improper trust account record keeping; and 9-102(B)(4) and 6-101(A)(3) for failing to promptly and properly pay over and deliver to American Pioneer their portions of funds received from closings of Beacon 21 units.

However, these admissions did not include deliberate and systematic embezzlement, nor was there direct evidence to the contrary. The admissions greatly shortened the final hearing in this voluminous and complex case where the focus was narrowed to the appropriate discipline.

13. Respondent's assertion that alcohol abuse impaired his judgment is suspect.

a. The "defense" and respondent seeking evaluation did not occur until November **1986**, well after the collapse.

b. The diversion of funds from closings to Beacon 21 was not a short term or isolated action but occurred as early as **1984.** It was continuous until the overall collapse where a total of 33 unit sales were closed without paydowns being made to the bank as required.

c. Respondent did not halt the improper activities after being confronted but closed an additional **11** units without making required payments to the bank for partial releases as required.

d. Respondent functioned as the title agent and handled the legal aspects of the Mart family ventures which were not limited to Beacon **21** but included other developments in the Martin County area over this period in time which included preparing legal documents, negotiating problems and dealing with various governmental agencies regarding permits, zoning and other matters incident to commercial development as well as the problems of Beacon **21** residential development.

e. The unrefuted testimony of the former bookkeeper, his accountant and the bank official was that they dealt with Mr. Mart on a frequent basis and he did not appear to exhibit any outward symptoms of being impaired. Moreover, respondent's wife of nineteen years did not testify to observing obvious signs of impairment of personality changes in her husband other than he was having problems with his blood pressure medicine and he seemed to sleep more. She also stated he was under stress after they moved to Martin County and did not keep the regular work hours he had in Dade County. However, she did testify they tended to argue over his increased consumption of wine late in the evening.

14. I find that respondent continued to function adequately during the time frame and that the obvious stress he found himself in was most probably due to the fact he was aware he

was improperly diverting monies from the bank and that the situation regarding the development was not getting better but rather worse. I further find that even if the respondent were impaired to some degree during this time frame, it cannot excuse, even partially, respondent's misconduct given it's magnitude. Although no clients in the traditional sense were harmed, I specifically note that Chicago Title ultimately bought out the project from American Pioneer due to the improper activities of respondent acting as it's agent. Their action prevented what might have been an extremely chaotic situation. Even if they ultimately make a profit on the project, it in no way excuses the gross misconduct by their agent which forced them into that position.

15. The effects of the collapse of Beacon 21 have been dramatic and substantial upon the respondent. As a direct result of the Beacon 21 demise:

a. Respondent has lost in excess of $1,000,000.00 of his own monies.

b. Respondent and his wife have been forced into bankruptcy and have virtually no assets other than the marital home, which presently has a lis pendens on it stemming from a voluntary consent judgment of over $2,000,000.00 that respondent consented to as a result of a lawsuit brought by Chicago Title.

c. Respondent's marital home is threatened with foreclosure as a result of respondent's inability to make his house payments based on the salary as a school teacher of he and his wife.

d. Respondent has been prosecuted criminally and has served significant time in jail concerning the Beacon 21 collapse.

e. Respondent's name and photograph have been repeatedly published in the respondent's local newspapers as a result of his arrest and conviction in the criminal cases, leading to his belief that he has been permanently stigmatized in his community and has impaired the relationship he had previously enjoyed with his friends and neighbors.

16. The Court also recognizes and notes positively the respondent's frank admissions made initially that his conduct fell below the standard required by The Florida Bar,

his voluntary suspension from the practice of law without further contest or hearing (the suspension having existed for over one year at this point), and the fact that respondent's willingness to admit his faults greatly abbreviated a grievance hearing that could have lasted well over a week. Instead, this Court was asked primarily to determine the appropriate punishment for the admitted misconduct.

17. In summary, respondent elected to use funds received in trust which properly belonged to American Pioneer over an extended period of time in an attempt to correct cash flow problems being experienced by the Beacon 21 condominium development project in Phases I and 11. When the bank discovered the apparent problem, respondent attempted to blame it on his staff. Notwithstanding making payments at that time on seven units, he closed an eleven additional units and failed to remit the necessary paydown amounts on those to the bank until the entire matter collapsed and the bank was owed some $1,885,400.00 as of June of 1986. The use of trust funds for purposes other than for which they are intended is amongst the worst types of misconduct an attorney can engage. It ranks with the offense of subornation of perjury and can never be condoned. It matters not that no client actually lost money in the traditional sense although Chicago Title is certainly still at risk and may incur substantial losses. It matters not that the money was not applied for personal purposes but rather used in an attempt to salvage a development project in which the respondent has a substantial interest. It would matter not if he had no interest in Beacon 21 but was merely doing this as an accommodation for his family members. The misdeeds present here are the misuse of the funds entrusted to the attorney for a specific purpose. I specifically find that even if the "impairment" were more obvious throughout the period, the magnitude of these misdeeds is such which calls for the ultimate discipline available.

18. The Court further finds that the appropriate discipline in this action shall be pursuant to the Code of Professional Responsibility and The Florida Bar Integration Rule rather than the Rules Regulating The Florida Bar, in that the Rules Regulating The Florida Bar were effective January 1, 1987, wherein the conduct complained of and admitted to occurred prior to that effective date.

111. 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:

I recommend the respondent be found guilty and specifically that he be found guilty of violating the following rules of Article XI of The Florida Bar's Integration Rule:

11.02(3)(a) for conduct contrary to honesty, justice or good morals; 11.02(4) for improper handling of trust funds; 11.02(4)(c) and the accompanying bylaw for improper trust account record keeping and improper designation of the account.

I find the respondent's conduct also violates the following Disciplinary Rules of The Florida Bar's Code of Professional Responsibility:

1-102(A)3) for engaging in illegal conduct involving moral turpitude; 1-102(A)(4) for engaging in conduct involving fraud, dishonesty, deceit or misrepresentation; 1-102(A)(6) for engaging in conduct which reflected adversely on his fitness to practice law; 6-101(A)(3) for neglecting a legal matter entrusted to him regarding the closing; 7-101(A)(1) for intentionally failing to seek the lawful objectives of his client Chicago Title; 7-101(A)(2) for intentionally failing to carry out a contract of employment with his client Chicago Title; 7-101(A)(3) for intentionally causing prejudice or damage to his client Chicago Title in the course of his professional relationship; 9-101(B)(1) for failing to properly notify his client Chicago Title of the receipt of its funds; 9-102(B)(3) for improper trust account record keeping; and 9-102(B)(4) for failing to properly pay over and deliver to the client funds received as requested.

IV. Recommendation as to Disciplinary measures to be applied:

I recommend the respondent be disbarred from the practice of law in Florida for a period of three years as provided in former Integration Rule 11.10(5). I further recommend the respondent remain alcohol free during this time and that he immediately enroll in an alcohol abuse program, if he is not already, and remain in one. I recommend it be the one offered by Florida Lawyer's Assistance, Inc. if he would still be eligible after disbarment. The respondent shall pay the costs of this proceeding. I leave the question of restitution, which should be made prior to readmission, open for full consideration at such time in the future if he reapplies for membership in the Bar.

V. Personal History and Past Disciplinary Record: After the finding of guilty and prior to recommending discipline to be recommended pursuant to Rule 3-7.5(k)(4), I considered the following personal history and prior disciplinary record of the respondent, to wit:

Age: 39
Date admitted to Bar: November 6, 1972
Prior Disciplinary convictions and disciplinary measures imposed therein: None
Other: Respondent has two minor children

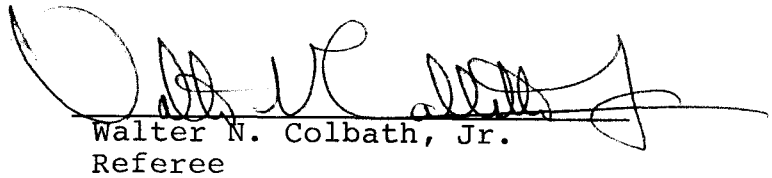
VI. Statement of costs and manner in which costs should be taxed: I find the following costs were reasonably incurred by The Florida Bar:

A.	Grievance Committee Level Costs	
1.	Administrative Costs	$150.00
2.	Transcript Costs	$172.40
3.	Bar Counsel/Branch Staff Counsel Travel Costs	$ 76.33
4.	Investigator's Expenses	$291.00
B.	Referee Level Costs	
1.	Administrative Costs	$150.00
2.	Transcript Costs	$712.25
3.	Bar Counsel/Branch Staff Counsel Travel Costs	$252.54
4.	Investigator Expenses	$478.64
C.	Miscellaneous Costs	
1.	Copying Costs	$221.15

TOTAL ITEMIZED COSTS: $2,504.31

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 May, 1988.



Walter N. Colbath, Jr.
Referee

Copies to:

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