

FILED

SUB. DATE

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

MAR 28 1988

THE FLORIDA BAR,

Complainant,

v.

JOHN MONTGOMERY GREENE,

Respondent.

CLERK, SUPREME COURT

By 90,925 Clerk

Case No. ~~69,938~~ Clerk
[TFB Case No. 87-23,349 (05A)]
(Formerly 05A87C69)

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, hearings were held on October 27, 1987, November 3, 1987, December 10 and 22, 1987, and March 7, 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 - In pro se

II. 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. In 1980 the respondent was retained by [REDACTED] to handle the closings on the sale of some lots located in Florida.

2. The respondent made an error in the legal description in the deeds. Mrs. [REDACTED] did not become aware of the error until January, 1982. She notified the respondent and he promised to make the necessary corrections.

3. The respondent failed to do so and Mrs. [REDACTED] filed a complaint with The Florida Bar in November, 1982.

4. In The Florida Bar v. Greene, 463 So.2d 213 (Fla. 1985), the Florida Supreme Court publicly reprimanded the respondent for his negligence and placed him on a one year period of probation during which time he was to correct the deeds. Failure to do so within thirty days would result in his immediate suspension for ninety days.

5. On April 10, 1986, the respondent was suspended from the practice of law for ninety days after he failed to observe the conditions of his probation which included correcting the deeds within thirty days. See The Florida Bar v. Greene, 485 So.2d 1279 (Fla. 1986).

6. By letter dated February 13, 1987, Mrs. [REDACTED] advised the Bar that several of the deeds had still not been corrected.

7. Respondent asserted he assumed his associate had made the necessary corrections. However, he did not check to see if this had been accomplished properly and in a timely manner.

8. The corrected deeds finally were mailed to Mrs. [REDACTED]'s counsel in or about October 1987. Mrs. [REDACTED] signed the deeds which were returned to the respondent in February. However, the exact status of the lots is still unclear as several were purchased by nonresidents.

III. Recommendations as to whether or not the Respondent should be found guilty: I recommend that the respondent be found guilty of the following Disciplinary Rules of the Code of Professional Responsibility: 1-102(A)(6) for engaging in any other misconduct that reflects adversely on his fitness to practice law; 6-101(A)(3) for neglecting a legal matter entrusted to him; 7-101(A)(1) for intentionally failing to seek the lawful objectives of his client through reasonably available means; and Rule 4-1.3 of the Rules of Professional Conduct for failing to act with reasonable diligence and promptness in representing a client after December 31, 1986.

I recommend that the respondent be found not guilty of violating the following Disciplinary Rules of the Code of Professional Responsibility: 7-101(A)92) for intentionally failing to carry out a contract for employment; and 7-101(A)(3) for intentionally prejudicing or damaging his client during the course of the professional relationship.

*Amended
see letter
amendment
attached to
this report*

IV. Recommendation as to Disciplinary measures to be applied:

I recommend that the respondent receive a public reprimand and be placed on probation for a period of two years. As a condition of the respondent's probation, within thirty days of billing, he shall reimburse Mrs. [REDACTED] for her costs of retaining independent counsel to clear up the situation. Respondent shall cooperate fully with independent counsel. The referee further urges Mrs. [REDACTED] to retain independent counsel as soon as possible. Respondent shall also bear all fees and costs in this matter. A failure to pay fees and costs of the independent counsel and these proceedings within one month of billing shall result in a twelve month period of suspension with proof of rehabilitation required.

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: 65

Date admitted to Bar: November 25, 1950

Prior Disciplinary convictions and disciplinary measures imposed therein:

The Florida Bar v. Greene, 235 So.2d 7 (Fla. 1970) - Public reprimand with a one year period of probation for failing to file his federal income tax return.

The Florida Bar v. Greene, No. 78-01,671 (1980) - Private reprimand for neglect of a legal matter.

The Florida Bar v. Greene, 463 So.2d 213 (Fla. 1985) - Public reprimand and a one year period of probation for neglecting to properly prepare or correct deeds as promised. If he failed to make the necessary corrections within 30 days, he would be suspended for a period of ninety days.

The Florida Bar v. Greene, 485 So.2d 1279 (Fla. 1986) - Ninety day suspension from the practice of law for failing to comply with probationary conditions including making the necessary corrections to the deeds as ordered.

The Florida Bar v. Greene, 515 So.2d 1280 (Fla. 1987) - Ninety-one day suspension for neglecting a legal matter and for failing to properly supervise non-lawyer personnel. The respondent was negligent in incorrectly

advising his clients that there were no liens encumbering property they were attempting to sell.

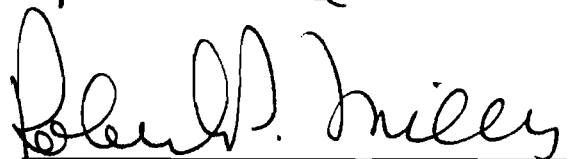
VI. Statement of costs and manner in which costs should be taxed: I find the following costs were reasonably incurred by The Florida Bar:

A. Grievance Committee Level Costs	
1. Administrative Costs	\$150.00
2. Transcript Costs	\$ 77.15
3. Bar Counsel/Branch Staff Counsel Travel Costs	\$ 9.46
B. Referee Level Costs	
1. Administrative Costs	\$150.00
2. Transcript Costs	\$340.10
3. Bar Counsel/Branch Staff Counsel Travel Costs	\$ 86.42
4. Investigator's Expenses	\$137.95

TOTAL ITEMIZED COSTS: \$951.08

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 24th day of March, 1988.


Robert P. Miller
Referee

Copies to:

David G. McGunegle, Bar Counsel
John M. Greene, Respondent
John T. Berry, Staff Counsel, The Florida Bar, Tallahassee,
Florida 32301

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

FILED
SID J. WHITE

70,935

APR 22 1988

THE FLORIDA BAR,

Complainant,

v.

JOHN MONTGOMERY GREENE,

Respondent.

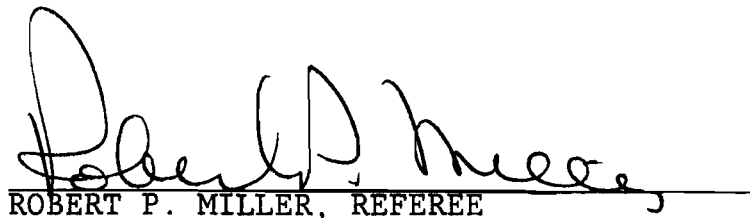
CLERK, SUPREME COURT
Case No. ~~69,938~~
(TFB Case No. ~~67,23849~~ (052))
(Formerly 05A87C69)

AMENDMENT TO REPORT OF REFEREE

Paragraph 8. of Section II of the Report of Referee is hereby amended to read as follows:

8. The corrected deeds finally were mailed to Mrs. [REDACTED] s counsel in or about October 1987. Mrs. [REDACTED] signed the deeds which were returned to the respondent in February. However, the exact status of the lots is still unclear as several were purchased by nonresidents.

Dated this 20th day of April 1988.


ROBERT P. MILLER, REFEREE

Copies to:

David G. McGunegle, Bar Counsel
John M. Greene, Respondent
John T. Berry, Staff Counsel, The Florida Bar,
Tallahassee, Florida 32301