

IN THE SUPREME COURT OF FLORIDA
BEFORE A REFEREE

THE FLORIDA BAR,
Complainant,

TFB File No. 87-26,221 (15B)
Supreme Court Case No. 71,052

v.

CARL A. SAX,
Respondent.

FILED
SIX MONTHS

JUN 10 1988

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 disciplinary action by order of this Court dated September 14, 1987. The pleadings, notices, motions, stipulations and transcript, all of which are forwarded to the Court with this report, constitute the entire record in this case.

The respondent appeared by Neale J. Poller, Esquire. The bar was represented by David M. Barnovitz, Assistant Staff Counsel.

II. FINDINGS OF FACT AS TO EACH ITEM OF MISCONDUCT OF WHICH THE RESPONDENT IS CHARGED:

In accordance with the stipulation of the parties, I make the following findings of fact herein:

A. 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.

B. On or about April 24, 1986, respondent, acting on behalf of Palm Court, Inc., a Florida corporation, in an action commenced in the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida entitled Palm Court, Inc., plaintiff v. TPC Condominium Association, Inc., et al., defendants, bearing case number 86-3885(CL)F, upon an ex parte application brought in such action for the appointment of a receiver, averred to the court, in writing, as follows:

The undersigned has not made any effort to give notice to the defendants because the unit owners all reside outside the State of Florida, and are not presently represented by counsel of whom the undersigned is aware, and TPC Condominium Association, Inc. is a

Florida corporation whose officers all reside out of the State of Florida and whose counsel, if any, is not known to the undersigned.

Notice should not be required because of the difficulty in contacting the defendants and danger that the hotel may be closed before notice is accomplished.

C. Such averments were known or should have been known by respondent to be false when made and presented to the court.

D. In fact, at the time respondent made such averments as hereinabove referred to in paragraph B of these findings, respondent knew or should have known that the law firm of Floyd Pearson Richman Greer Weil Zack & Brumbaugh of Miami, Florida represented one or more defendant-unit owners and/or defendant TPC Condominium Association, Inc. in connection with the dispute which was the subject of the above referenced litigation.

E. In fact, no notice of any type, nature or description of the application for the appointment of a receiver was given to the law firm of Floyd Pearson Richman Greer Weil Zack & Brumbaugh.

F. A copy of the pleading containing the averments hereinabove referred to in paragraph B of these findings is attached hereto as exhibit 1. Although presented to the court as a duly notarized instrument, the jurat appearing on such instrument (Exhibit 1) was dated and executed by the notary public prior to and without the presence of the respondent who affixed his signature thereto at a subsequent time outside the presence of the notary public.

III. RECOMMENDATIONS AS TO WHETHER OR NOT THE RESPONDENT SHOULD BE FOUND GUILTY:

By virtue of the findings of fact stipulated to by the parties, I make the following recommendations with respect to the violations charged by the bar:

A. Respondent's misrepresentations to the court, as aforesaid, constitute violations of Fla. Bar Integr. Rule, article XI, Rule 11.02(3) (a) which provides that the commission by a lawyer of any act contrary to honesty, justice or good morals, whether the act is committed in the course of his relations as an attorney or otherwise,

constitutes a cause for discipline and Disciplinary Rules 1-102(A) (4) and 1-102(A) (6) of the Code of Professional Responsibility which provide that a lawyer shall not engage in conduct involving misrepresentation and shall not engage in any other conduct that adversely reflects on his fitness to practice law.

B. By permitting the pleading (exhibit 1) to be presented to the court as a duly notarized instrument when, in fact, it was not, respondent acted in a negligent fashion thereby violating Disciplinary Rule 1-102(A) (6) of the Code of Professional Responsibility which provides that a lawyer shall not engage in any other conduct that adversely reflects on his fitness to practice law.

IV. RECOMMENDATIONS AS TO DISCIPLINARY MEASURES TO BE APPLIED:

I recommend as discipline for the violations hereinabove enumerated that respondent receive a public reprimand.

V. PERSONAL HISTORY:

Respondent was admitted to The Florida Bar on October 23, 1975 and is 41 years of age.

VI. STATEMENT AS TO PAST DISCIPLINE:

Respondent has no prior discipline record with The Florida Bar.

VII. STATEMENT OF COSTS OF THE PROCEEDINGS AND RECOMMENDATIONS:

The costs of these proceedings were as follows:

Administrative Costs:

Grievance Committee -----	\$	150.00
Referee -----		150.00

Court Reporter:

Grievance Committee -----		625.25
Referee -----		82.50

Copy Costs -----		50.00
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Process Service Costs -----		132.55
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Witness Fees -----		<u>17.20</u>
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<u>TOTAL</u> -----	\$	1,207.50
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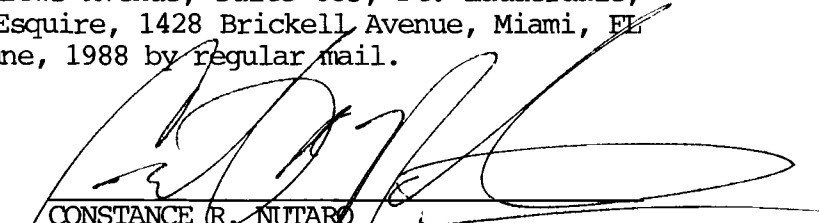
I recommend that the bar's costs be taxed against the respondent.

RENDERED this 7 day of June, 1988 at Broward County, Florida.


CONSTANCE R. NUTARO
REFEREE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing report of referee was furnished to David M. Barnovitz, Assistant Staff Counsel, The Florida Bar, 5900 North Andrews Avenue, Suite 835, Ft. Lauderdale, FL 33309 and to Neale Poller, Esquire, 1428 Brickell Avenue, Miami, FL 33131 on this 7 day of June, 1988 by regular mail.


CONSTANCE R. NUTARO
REFEREE