

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

WALTER J. BELLEVILLE,

Respondent.

Case No. 71,080
[TFB Case No. 87-27,419(18A)]

FILED
SID A. WALKER

APR 15 1988

REPORT OF REFEREE SUPREME COURT

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, a pretrial conference was held on January 14, 1988, and final hearing was held on February 18, 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 - Dennis F. Fountain

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:

The parties have tendered a joint proposed disposition which is attached as Exhibit 1. After full consideration, it has been accepted by the undersigned along with the oral agreement regarding restitution which was placed into the record by counsel. The allegations to which the respondent has stipulated are as follows:

1. Harry Hurst was the personal representative of the estate of Richard A. Grovitt. In January, 1984, Mr. Hurst contacted the respondent to request that he represent him in

the matter. The respondent undertook the representation through an associate, Arthur Aspinwall, who later became a shareholder in his law firm.

2. Later in 1984, Mr. Hurst became acquainted with Herbert Millhouse. He was then seeking some lawn equipment and respondent referred him to Mr. Millhouse. Through Millhouse, Mr. Hurst learned of a possible investment opportunity in a real estate development known as Blue Grotto Bay located in Jamaica. Mr. Millhouse was president of the company. Mr. Hurst expressed an interest in investing in the venture, but was advised by Mr. Millhouse that it was not open to small investors.

3. On August 21, 1984, the respondent, who was also a shareholder and officer in Blue Grotto Bay Corporation, spoke with Mr. Hurst regarding the company and its plans for the property development. The respondent was enthusiastic about the prospects for the venture as was Mr. Millhouse. As a result, Mr. Hurst decided to purchase stock in the corporation. The Hursts entered into a stock subscription agreement at this time and were furnished with an offering circular although they do not recall exactly when it was received.

4. A check for \$24,000 was made payable to Blue Grotto Bay Corporation on August 23, 1984, for 16 non voting shares at \$1,500 each. Thereafter, Thomas Bevis, an attorney retained as escrow agent for the company, deposited the check from Mr. Hurst into an escrow account for the corporation. The Hursts were also issued a prospectus, but there is some dispute as to when this was done.

5. On October 29, 1984, Mr. Hurst and his wife signed a receipt authorizing the escrow agent to release the funds to the respondent for payment of the shares. At the same time the respondent transferred sixteen shares of his personal stock to the Hursts. Thus, he received the \$24,000 rather than the corporation which was in the process of soliciting one investor in the amount of \$150,000.

6. Hurst testified he was unaware that the stock consisted of the respondent's personal shares and had he known this he would not have purchased it. He maintains he first became aware of this in or about November, 1986, after the project's viability was called into question.

7. The respondent maintains Mr. Hurst was aware at all times that he was purchasing the respondent's personal stock.

8. The only written notification to Mr. Hurst that a potential conflict could be present between himself and the respondent was the offering circular, the stock subscription agreement, and the prospectus. The respondent admits these warnings were insufficient to comply with the requirements of disciplinary rules 5-104(A) and 5-104(B) in that he failed to advise his client affirmatively of the conflict, make clear, in writing, the source of the stock, and insist his client seek independent counsel prior to investing.

III. Recommendations as to whether or not the Respondent should be found guilty: I make the following recommendations as to guilt or innocence:

I recommend the respondent be found guilty of violating the following rules in accordance with the joint proposed disposition.

Disciplinary Rules 5-104(A) for entering into a business transaction with a client where they have differing interests therein and the client expects the lawyer to exercise professional judgment for the protection of the client; and 5-105(B) for continuing multiple employment when the exercise of his professional judgment on behalf of a client will be or is likely to be adversely affected by his representation of another client.

IV. Recommendation as to Disciplinary measures to be applied:

I recommend the respondent's stipulated admission of facts and violations be accepted and that he receive a public reprimand by an appearance before the Board of Governors of The Florida Bar. I further recommend that within one year of the Florida Supreme Court order finalizing this case the respondent shall repay Mr. Hurst the full amount of his investment of \$24,000 plus 12% interest to be calculated from the date of the investment on August 23, 1984 to the date of payment. In the event the stock is sold for less than \$24,000, plus interest, the respondent shall make up the difference. If the project and accordingly the Hursts' portion of it sells for more than Mr. Hurst's investment plus interest, then the overage shall be paid over to the Hursts. Should the respondent declare bankruptcy with regard to this debt it will be considered a disciplinable matter for consideration by The Florida Bar.

If the debt is legally extinguished through bankruptcy or any other means, the respondent must reaffirm the obligation as part of the disposition of this case. The foregoing measures have been accepted by all concerned parties.

In an unrelated matter, the respondent has agreed to correct through other counsel a problem with a life estate on certain property in the Grovitt estate.

- 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: 42

Date admitted to Bar: July 25, 1983

Prior Disciplinary convictions and disciplinary measures imposed therein: None

- 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	\$271.85
3. Investigator's Expenses	\$333.25
B. Referee Level Costs	
1. Administrative Costs	\$150.00
2. Transcript Costs	
A. Depositions	\$306.75
B. Final Hearing - not yet available	120.80
3. Bar Counsel/Branch Staff Counsel	
Travel Costs	\$ 7.89
4. Investigator Expenses	\$410.25

TOTAL ITEMIZED COSTS: ~~\$1,629.99~~

~~\$1,750.79~~ *MAK*

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 11th day of April, 1988.



Michael F. Cychmanick
Referee

Copies to:

Mr. David G. McGunegle, Bar Counsel
Mr. Dennis F. Fountain, Counsel for Respondent
Mr. John T. Berry, Staff Counsel, The Florida Bar,
Tallahassee, Florida 32301