

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

JOHN H. LOWE, JR.,

Respondent.

Case No. 71,242
File No. 86-19,368(13B)
#87-25,682(13B),
#87-25,685(13B) and
#87-25,693(13B)

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the Rules of Discipline, a final hearing was held on March 1, 1988.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: Richard A. Greenberg
Assistant Staff Counsel

For the Respondent: No appearance

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 upon below, I find:

As to Count I, Case No. 86-19,368(13B) (f/k/a 13B86H34), the oral Motion of The Florida Bar to abate this Count is granted. The Bar was unable to proceed with testimony on this particular Count due to its inability to locate the complaining witness.

As to Count II, Case No. 87-25,682(13B) (f/k/a 13B87H27), the evidence shows that Mr. [REDACTED] paid a \$5,000.00 deposit to the respondent to purchase a lot owned by the respondent. Mr. [REDACTED] allowed the respondent to cash the deposit because the respondent was an attorney. The respondent did not appear for the closing of the real estate transaction and has not refunded the deposit money to Mr. [REDACTED].

As to Count III, Case No. 87-25,685(13B) (f/k/a 13B87H30), the evidence shows that Mr. [REDACTED] retained the respondent to handle a civil matter. At the time Mr. [REDACTED] retained the respondent he provided the respondent with original documents related to the civil matter. The respondent failed to return these original documents to Mr. [REDACTED] despite repeated requests both in person and by telephone.

As to Count IV, Case No. 87-25,693(13B) (f/k/a 13B87H38), I find that based upon Bar's Exhibit 1 in Count IV the evidence shows that the respondent has been convicted of two cases of grand theft and has been sentenced to fifteen years Florida State Prison to be followed by a five year probationary sentence.

III. Recommendation as to Whether of Not the Respondent Should be Found Guilty: As to Count II, I recommend the respondent be found guilty of violating DR 1-102(A) (4) (engage in conduct involving dishonesty, fraud, deceit, or misrepresentation).

As to Count III, I recommend the respondent be found guilty of violating DR 6-101(A) (3) (neglect of a legal matter entrusted to him); and, DR 9-102(B) (failure to return property of a client as requested).

As to County IV, I recommend the respondent be found guilty of violating DR 2-106(A) (collecting an excessive fee); DR 1-102(A) (3) (engaging in illegal conduct involving moral turpitude); DR 1-102(A) (4) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation); DR 1-102(A) (5) (engaging in conduct prejudicial to the administration of justice); DR 9-102(A) (failure to preserve identity of funds of a client); and, DR 9-102(B) (failure to promptly deliver to the client funds or property as requested).

IV. Recommendation as to Disciplinary Measures to be Applied: I recommend that the respondent be disbarred from the practice of law for fifteen (15) years. The respondent should not be allowed to apply for readmission to the Bar if he is either on probation or on parole from the Department of Corrections.

V. Personal History and Past Disciplinary Record:

Age: 34

Date Admitted to Bar: May 15, 1980

Prior Disciplinary Record:

Case No. 61,255 - Private Reprimand for making verbal threats to a client's parole officer.

Case No. 62,737 - Private Reprimand plus six (6) months probation for trust fund violations.

Case No. 68,450 - Three (3) year suspension for conduct involving fraud, deceit, dishonesty and misrepresentation and charging a clearly excessive fee.

Case No. 71,958 - Automatic suspension for adjudication of guilt of a felony.

Mitigating Factors: 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:

See attached Statement of Costs.

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.

Dated this _____ day of _____, 1988.

B. J. Driver
Referee

Copies furnished to:

John R. Lowe, Jr., Respondent
Richard A. Greenberg, Asst. Staff Counsel
John T. Berry, Staff Counsel

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STATEMENT OF COSTS

Grievance Committee Level:

Administrative Costs (\$150.00 x 4).....	\$ 600.00	
Court Reporter Costs;		
#87-25,682(13B) (\$3.00 pp. 18 pg)...	54.00	
#87-25,685(13B) (" " 8 ")...	24.00	
#87-25,693(13B) (" " 31 ")...	93.00	
Appearance Fee.....	75.00	
		\$ 846.00

Referee Level:

Administrative Costs (\$150.00 x 4).....	\$ 600.00	
Final Hearing March 3, 1988		
Court Report Costs (original Plus 1).	190.00	
Appearance Fee.....	45.00	
Staff Investigator Time and Mileage:		
87-25,682(13B) (7.2 hours).....	115.20	
" " " (100 miles).....	15.00	
87-25,685(13B) (1.4 hours).....	22.40	
" " " (15 miles).....	5.35	
87-25,693(13B) (58.5 hours).....	936.00	
" " " (550 miles).....	155.50	
		<u>\$2,084.45</u>
ESTIMATED COSTS TO DATE.....		<u>\$2,930.45</u>

Dated this 3rd day of April, 1988.

B. J. DRIVER
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Referee

Copies furnished to:

John H. Lowe, Jr.
Richard A. Greenberg, Asst. Staff Counsel
John T. Berry, Staff Counsel