

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,
v.
HERMAN COHEN,
Respondent.

Supreme Court
Case No. 71,279

(Florida Bar File
No. 87-24,782(11H)
(formerly 11H87M18)

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

Pursuant to being appointed as referee to conduct disciplinary proceedings herein, according to Chapter 3, Rules Regulating The Florida Bar, hearings were held on the following dates:

November 24, 1987 - Pretrial hearing and to set final hearing. Respondent waived venue and agreed to trial in Broward County rather than Dade County.

February 3, 1988 - Florida Bar's Motion to Impose Sanctions was denied.

February 16, 1988 - Final Hearing. The following attorneys appeared as counsel for the parties:

For The Florida Bar: Paul A. Gross of Miami

For the Respondent: Shalle Stephen Fine of Miami

II. FINDINGS OF FACTS AS TO EACH ITEM OF MISCONDUCT.

After considering all the pleadings and evidence before me, pertinent portions of which were commented upon below, I find:

That N.I. Meats, Inc. owned two apartments in Coral Gables, Florida. Spike Von Zamft was the sole stockholder. Herman Cohen was attorney for N.I. Meats, Inc. In order to avoid high premiums for liability insurance and payment of Respondent.

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I. SUMMARY OF PROCEEDINGS:

Pursuant to being appointed as referee to conduct disciplinary proceedings herein, according to Chapter 3, Rules Regulating The Florida Bar, hearings were held on the

execute a mortgage and note from N. I. Meats, Inc. to Von Zamft and Cohen.

On or about December 1, 1979, Von Zamft, as President of the corporation, executed a mortgage deed and Promissory Note for \$60,000.00 in favor of Von Zamft and Cohen. (Bar Exhibit 2). Although the note indicates that \$60,000 was "for value received" and the deed was "for divers good and valuable consideration, and also for consideration of the aggregate sum named in the note," in fact, N.I. Meats, Inc. did not receive \$60,000 or other valuable consideration for the promissory note and mortgage deed.

It is the view of this referee that the deed and note were used as a subterfuge, to avoid payments to persons who might be injured on the uninsured properties owned by N.I. Meats, Inc. While no persons were injured by this scheme, it was, nevertheless, unethical.

That during the latter part of 1980 or the first part of 1981, at the suggestion of Cohen, Von Zamft and Cohen foreclosed the mortgage executed by N.I. Meats, Inc. to Von Zamft and Cohen (Bar Ex. 3).

On or about March 3, 1981, Cohen filed an Affidavit of Indebtedness in the case of Spike Von Zamft and Herman Cohen, Inc., in the Circuit Court of the Eleventh Judicial Circuit, Case No. 81-541-Div. 10. Cohen stated in the affidavit, that N.I. Meats, Inc. was indebted to Von Zamft and Cohen in the sum of \$60,000.00 with interest in the amount of \$3,000.00. (Bar Ex. 25).

This referee finds that the Mortgage Deed, Promissory Note, Mortgage Foreclosure Action, and the Affidavit, were shams, as there really was no indebtedness of \$60,000.00 by N.I. Meats, Inc. to Cohen and Von Zamft.

Accordingly, I find, by clear and convincing evidence, "for value received" and the deed was "for divers good and valuable consideration, and also for consideration of the aggregate sum named in the note," in fact, N.I. Meats, Inc. did not receive \$60,000 or other valuable consideration for the promissory note and mortgage deed.

It is the view of this referee that the deed and note were used as a subterfuge, to avoid payments to persons who

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

I recommend that the respondent, Herman Cohen, be found guilty and specifically that he be found guilty of violating the following Disciplinary Rules of the Code of Professional Responsibility:

DR 1-102(A) (4), engaging in conduct involving dishonesty, fraud, deceit or misrepresentation;

DR 1-102(A) (5), engaging in conduct that is prejudicial to the administration of justice;

DR 1-102(A) (6), engaging in any other conduct that adversely reflects on his fitness to practice law;

DR 7-102(A) (3), concealing or knowingly failing to disclose that which is required by law to reveal;

DR 7-102(A) (4), knowingly using perjured or false evidence;

DR 7-102(A) (6), participating in the creation or presentation of evidence when he knows or it is obvious that the evidence is false;

DR 7-102(A) (7), counseling or assisting his client in conduct that the lawyer knows to be illegal or fraudulent.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED.

I recommend that Herman Cohen, the respondent, be suspended from practicing law for ninety-one days and that he be required to show proof of rehabilitation before being reinstated.

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD

After a finding of guilty and prior to recommending discipline to be recommended, I considered the following personal history and prior disciplinary record of the respondent, to wit:

Herman Cohen was born during 1926 and was admitted to The Florida Bar during June, 1951.

On April 14, 1976, the Supreme Court of Florida publicly reprimanded the Respondent for improper conduct in

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DR 1-102(A) (5), engaging in conduct that is prejudicial to the administration of justice;

DR 1-102(A) (6), engaging in any other conduct that adversely reflects on his fitness to practice law;

DR 7-102(A) (3), concealing or knowingly failing to disclose that which is required by law to reveal;

DR 7-102(A) (4), knowingly using perjured or false

On March 30, 1983, Herman Cohen was given a Private Reprimand for interference with the administration of justice. Florida Bar File No. 83-339(11H).

In addition to the discipline imposed by The Florida Bar, the Court, in the case of Jack Cohen and Sandra Cohen v. New Sunrise Investment Corp., Case No. 76-16246 FC (26), in the Circuit Court of the Eleventh Judicial Circuit, General Division, Family Section, found, by "clear and convincing evidence," that Herman Cohen and his brother, fraudulently transferred properties. The Court also stated, "the testimony of the Cohen brothers and their bogus documents amounted to a shocking exercise in duplicity". For details see Complainant's Memorandum Concerning Discipline and certified copy of Final Judgment Setting Aside Fraudulent Conveyances, which is attached to said Memorandum.

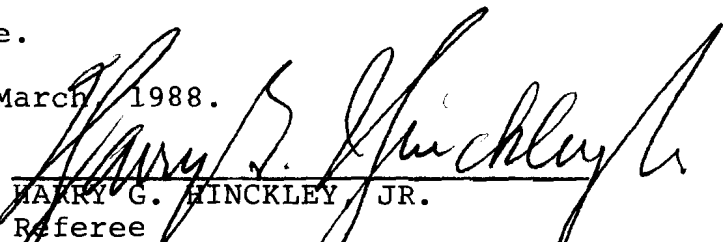
VI. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED:

Court Reporter:

Grievance Committee Hearing 5/12/87	\$ 433.20
Referee Hearing 2/16/88.	\$ 714.50
<u>Travel & Witness Fees:</u> (Spike Von Zamft)	\$ 13.00
<u>Subpoena Costs for Grievance and Referee Hearings:</u>	\$ 159.50
<u>Administrative Costs:</u>	\$ 300.00
Rule 3-7.5(k)(i)(5)	
<u>Bar Counsel Travel Expenses:</u>	\$ 29.82
TOTAL	\$1,650.02

The costs of these proceedings, which are \$1,650.02, should be taxed against the Respondent, for which sum, I recommend, let execution issue.

Dated this 22 day of March, 1988.


HARRY G. HINCKLEY, JR.
Referee

fraudulently transferred properties. The Court also stated, "the testimony of the Cohen brothers and their bogus documents amounted to a shocking exercise in duplicity". For details see Complainant's Memorandum Concerning Discipline and certified copy of Final Judgment Setting Aside Fraudulent Conveyances, which is attached to said

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing Report of Referee were mailed on this 22 day of March, 1988 to the following attorneys:

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