

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,
v.
CHARLES W. STONE,
Respondent.

CASE NO. 71,698

FILED
SID L. WIER

JUL 13 1988

AMENDED REPORT OF REFEREE

CLERK SUPREME COURT

By *MJ*
Deputy Clerk

I. Summary of Proceedings. Pursuant to the undersigned being appointed as referee to conduct disciplinary proceedings herein according to Article XI of the Integration Rule of The Florida Bar, a hearing was held in the above entitled cause on May 26, 1988, in the St. Lucie County Courthouse, Ft. Pierce, Florida. The pleadings, notices, motions, orders, transcripts, and exhibits, all of which have been forwarded to The Supreme Court of Florida, constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: David G. McGunegle, Bar Counsel

For the Respondent: C. R. McDonald, Jr., Esquire

II. Findings of Fact as to Each Item of Misconduct of which the Respondent is Charged: After considering all of the pleadings and evidence before me, pertinent portions of which are commented upon below, I find:

1. On or about September 14, 1983, one Christopher Robert Lange entered into a lease with Carl R. Ashton and Mary Jo Ashton whereby he would lease certain property in St. Lucie County to be used for a salvage yard. There is no evidence that the Respondent, Charles W. Stone, was involved in the negotiation or preparation of this lease.

2. On June 23, 1984, Articles of Incorporation were entered into whereby Christopher Lange (in the Articles he is identified as "Christopher Lane") would hold 5 of a total of 14

shares of a new corporation, C C Salvage, Inc. The remaining 5 shares were owned by Herman B. Chadwick, as trustee, Harmon D. Chadwick, and Claude C. Chadwick. Apparently the only assets actually transferred to this corporation consisted of \$500.00 cash. This asset is presumed to have been put in the corporation only because it is recited in the incorporating documents. Harmon Chadwick kept a salvage license in his name and Mr. Lange apparently kept the leased property in his name.

3. On about June 8, 1985, one Ernest B. Chick entered into an agreement with Herman Chadwick to buy the 9 shares of corporate stock owned by the Chadwicks. There was apparently some discussion to the effect that he would also ultimately buy the 5 shares owned by Mr. Lange.

4. Mr. Chick and Mr. Chadwick then went to the Respondent to have him do the paperwork to accomplish the purchase. The Respondent then prepared a document entitled "Articles of Agreement" (Bar Exhibit 4) which was apparently intended to memorialize the agreement between Chick and Chadwick. The document he prepared is not an agreement between Chick and Chadwick at all. It purports to be an agreement by which C C Salvage Inc. will convey 9 shares of stock to Ernest B. Chick. Since the corporation did not own this stock the Articles of Agreement are really ludicrous. It is noted that the Articles also make reference to an inventory being attached to the document. No such inventory was introduced into evidence and it must be assumed that no such inventory was ever prepared.

5. Mr. Lange subsequently refused to sell his shares in the corporation to Mr. Chick and brought an action to evict Mr. Chick and the corporation from the property on which he held the lease. The eviction action was ultimately successful.

6. Although the Respondent's participation in the original transaction between Mr. Chick and the Chadwicks was extensive and contradictory, the Respondent then undertook to represent Mr. Chick when Mr. Lange brought an action against him to evict Mr. Chick and C C Salvage, In. from the property.

7. Mr. Chick has maintained since being evicted from the property that Mr. Stone intentionally failed to advise him that the corporation did not have the lease to the property in its name. While the evidence submitted at the hearing is contradictory, there is no evidence to indicate that the Respondent knew whose name the lease was in. Accordingly, this Referee cannot find that the Respondent intentionally failed to disclose this important fact to Mr. Chick.

8. The Respondent maintained that his only role in this transaction was to do paperwork to memorialize a deal that Mr. Chick and Mr. Chadwick made with no participation by him. He also maintained that he tried to protect Mr. Chick from an improvident investment by making sure that the corporation's pre-existing debts were paid. He even made some reference during his testimony to the Bulk Sales Act. This position is, of course, totally inconsistent with being a simple scrivener, as he also maintained.

9. On or about October 19, 1985, the Respondent, acting on behalf of an old friend and client, R. C. Lockhart, arranged for R. C. Lockhart to loan \$4,000.00 to C C Salvage, Inc. The check which represented the proceeds for this loan was signed by Mr. Lockhart but contained a notation on the face of the check, admittedly made by the Respondent, requiring that \$4,800.00 be repaid within 90 days.

10. No competent evidence was presented at the hearing relating to a similar loan arranged by the Respondent for a Mr. Shay.

III. Recommendations as to Whether or Not the Defendant Should be Found Guilty: Although the evidence regarding the original sale of the stock from Mr. Chadwick to Mr. Chick is contradictory, this Referee finds that there is insufficient evidence that the Respondent knowingly withheld information about the lease from Mr. Chick. The evidence does indicate, however, that the Respondent was either woefully unprepared for the service he rendered to whoever his client was in the transaction or that he was clearly incompetent. The Respondent

purported to document a sale of stock from Mr. Chadwick to Mr. Chick by preparing an instrument entitled "Articles of Agreement" between C C Salvage Inc. and Mr. Chick. Since the corporation was clearly not a party to the transaction it is a complete mystery to this Referee what purpose this document was supposed to serve. Even if we assume that the document was appropriate in a convoluted way it makes reference in the first paragraph to there being attached to the Articles an inventory, presumably of the corporation's assets. There is no evidence that this inventory was either prepared or attached.

2. The evidence regarding the allegations in Count II of the Complaint demonstrate that the Respondent was the primary negotiating party in arranging what was clearly a criminally usurious loan. He either negotiated or dictated the terms of repayment of the loan with no suggestion or direction from Mr. Lockhart, the individual who provided the funds for the loan.

3. Based upon the findings that have been set forth it is recommended that the Respondent be found guilty of violating the following Disciplinary Rules of The Florida Bar's Code of Professional Responsibility:

A. Count I

(1) 5-105 (A) for accepting employment when the exercise of his independent professional judgment on behalf of a client was likely to be adversely affected by the acceptance of the proffered employment.

(2) 5-105 (B) for continuing multiple employment when the exercise of his independent professional judgment on behalf of a client was likely to be adversely affected by his representation of another client.

(3) 6-101 (A) (2) for handling a legal matter without adequate preparation.

(4) 6-101 (A) (3) for neglecting a legal matter entrusted to him.

B. Count II

(1) 1-102 (A) (3) for engaging in illegal conduct involving moral turpitude.

4. It is recommended that the Respondent be found not guilty of violating the remaining charges made by The Bar in Count II of the Complaint.

IV. Recommendation as to Disciplinary Measures to be Applied:

On July 6, 1988, a hearing was conducted in Courtroom B, Orange County Courthouse, Orlando, Florida, at which time the parties presented evidence and arguments as to a recommended disposition in this proceeding.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: David G. McGunegle, Jr.

For the Respondent: Jeffrey J. Colbath

In determining a recommendation as to disciplinary measures to be applied this Referee has considered the following matters:

1. The Respondent has been a practicing member of The Florida Bar since 1955. In 1981, he received a private reprimand but no specific information about that matter has been made a part of this record. The Respondent has been active in his church during the period of time he has lived in Fort Pierce. The fact that he has practiced law for approximately 33 years with only one reported disciplinary matter is a circumstance which has been considered in mitigation.

2. This Referee sees a couple of aggravating factors in Mr. Stone's present situation. He has engaged in what amounts to dual representation with clients with conflicting interests. In addition, he has represented clients in this case with whom he had close personal relationships, giving rise to the probability that he was placing his own interests in conflict. He seems to be unable to recognize the severity of the conflicts which arose during his representation of the various parties in the matter.

3. In Count II of the Complaint The Bar charged, and this Referee found, that the Respondent negotiated and effected a clearly criminally usurious loan. It has been suggested that the Respondent was not aware that what he did was criminal in

nature. He arranged a loan with an effective annual interest rate of 80%. This Referee has no doubt that he was aware that he was making a usurious loan. He is fortunate that he was not prosecuted for criminal conduct.

Upon consideration of these mitigating and aggravating circumstances it is the recommendation of this Referee that the Respondent be suspended for a period of six months and thereafter until he shall prove his rehabilitation as provided in Rule 3-5.1 (e), Rules Regulating The Florida Bar.

V. 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	332.80
3. Bar Counsel/Branch Staff Counsel Travel Costs	68.48
4. Investigator's Expense	644.89

B. Referee Level Costs

1. Administrative Costs	\$ 150.00
2. Transcript Costs	527.70
3. Bar Counsel/Branch Staff Counsel Travel Costs	137.64
4. Investigator's Expenses	272.38

TOTAL ITEMIZED COSTS: \$2,283.89

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 13th day of July, 1988.



TED P. COLEMAN, Referee