

IN THE SUPREME COURT OF FLORIDA

(Before A Referee)

THE FLORIDA BAR,
Complainant,

CASE NO. 72,327

vs.

HOWARD LEVINE,
Respondent.

FILED
SID J. WHITE

NOV 14 1989

CLERK, SUPREME COURT
By _____
Deputy Clerk

REPORT OF REFEREE

I. Summary of Proceedings. Pursuant to the undersigned's begin duly appointed as Referee to conduct disciplinary proceedings herein pursuant to Rule 3-7.4, Rules Regulating The Florida Bar, a hearing was held Thursday, June 1, 1989, in Chambers, Room 365-1, of the Leon County Courthouse, Tallahassee, Leon County, Florida. The pleadings, notices, orders, transcript and exhibits, all of which are forwarded to The Supreme Court with this report, constitute the record in this cause.

The following attorneys appeared as counsel for the parties.

For The Florida Bar appeared JAMES N. WATSON, JR.

For The Respondent appeared JOHN A. WEISS.

11. Findings of fact as to each item of misconduct of which Respondent is charged. After considering all the pleadings and evidence before me, pertinent portions of which are commented on below, I find as follows:

A. That on July 31, 1987, HOWARD LEVINE plead guilty in Case No. 87-7195CF-T to Counts 3 and 210 of an Information relating to organized fraud and the unlawful operation of boiler rooms, and on said date was adjudicated guilty of said

charges by The Honorable Stanton Kaplan. (Bar Exhibit 1).

B. On September 21, 1987, HOWARD LEVINE, entered a plea of Nolo Contendre to Counts 1, 3, 4 and 5 of a Complaint and Information in Case No. 86-657, relating to violations of Oklahoma Securities Act, and on said date was adjudicated guilty of the following listed crimes. (Bar Exhibit 2).

1. Conspiracy to violate Oklahoma Securities Act;
2. Failure to register as agents and employment of unregistered agents;
3. Distribution of unfiled and unapproved sales literature; and
4. Fraud in the offer and sale of securities,

C. Respondent neither admits or denies the rule violations and contends that he entered an "Alford" plea in each of the cases because of personal health reasons, family considerations, and his financial inability to defend. North Carolina v. Alford, 400 US 25, 37, 91 S. Ct. 160, 167, 27 L.Ed.2d 162 (1970).

III. Recommendations as to whether or not the Respondent should be found guilty. I recommend that the Respondent be found guilty and specifically that he be found guilty of violating the following Disciplinary Rules of the Code of Professional Responsibility, to-wit: 1-102(A)(3) and 1-102(A)(4), and further that Respondent be found guilty of violating Rules 11.02(3)(a) and 11.02(3)(b) of Article XI, of The Florida Bar Integration Rule.

IV. Recommendations as to disciplinary measures to be applied. I recommend that Respondent be suspended from the practice of law in Florida for a period of three (3) years, nunc pro tunc August, 1987, and thereafter until he shall prove his rehabilitation as provided in Rule 11.10(4). I further recommend that Respondent be required to satisfactorily pass The Florida Bar examination prior to the restoration of his privileges of membership in The Florida Bar.

V. Personal history and past disciplinary record.

After finding Respondent guilty and prior to recommending discipline to be recommended pursuant to Rule 11.06(9)(a)(4), I considered the following personal history and prior disciplinary record of Respondent, to-wit:

Age: 46

Date admitted to Bar in Florida: 1970

Prior disciplinary convictions and disciplinary measures imposed therein: None

Other personal data: Respondent recognizes the seriousness of the charges against him, and while steadfastly maintaining his innocence to the Florida and Oklahoma charges to which he entered pleas, he has not asked that this action be dismissed or that he be found not guilty, and has accepted the fact that discipline is appropriate.

VI. Statement of costs and manner in which costs should be taxed. While it is obvious that costs have been incurred by The Florida Bar in this action, there was no evidence presented by The Florida Bar as to the costs incurred. Accordingly, I can make no recommendations regarding the amount of costs to be taxed.

DATED this 13th day of November, A.D., 1989.


WILLIAM L. GARY
Referee

copies furnished to:

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