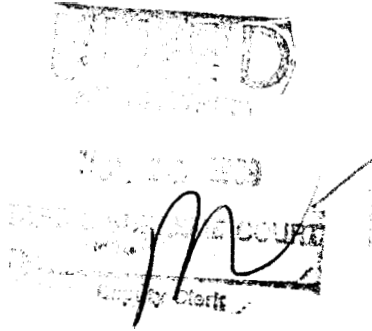


IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,  
Complainant,  
vs.  
JEFFREY SHUMINER,  
Respondant.

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Supreme Court  
Case No. 72,886



REPORT OF REFEREE

Pursuant to the Order of the Chief Justice the undersigned was appointed as referee to preside over this disciplinary hearing. The Florida Bar, pursuant to a finding by a grievance committee that there was probable cause to believe this respondent Jeffrey Shuminer, guilty of misconduct, has filed a formal complaint. The respondent, on February 23, 1989 entered an Unconditional Plea of Guilty.

I. This referee finds the following facts.

A. He is, and at all times hereinafter mentioned was, a member of The Florida Bar, subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

B. He maintained a trust account at Continental National Bank of Miami, Miami, Florida, Account No. 6-121-2 (hereinafter referred to as "trust account").

C. An audit of his trust account was undertaken by Carlos Ruqa, The Florida Bar Staff Auditor, which included all recorded trust account transactions during the period January 1, 1987 through January 31, 1988.

D. As of October 30, 1987 he should have preserved in his trust account as least TWELVE THOUSAND TWO HUNDRED SIX DOLLARS AND TWENTY CENTS (12,206.20) representing funds received from or on behalf of clients (hereinafter referred to as "client liability").

E. His trust account bank statement reflects a balance of EIGHT HUNDRED FORTY TWO DOLLARS AND FIFTY FOUR CENTS \$842.54 as of October 30, 1987.

F. His trust account client liability exceeded trust account assets as of October 30, 1987.

G. As of October 30, 1987, there was a shortage in his trust account in the amount of ELEVEN THOUSAND THREE HUNDRED SIXTY THREE DOLLARS AND SIXTY-SIX CENTS (\$11,363.66).

H. The shortage in his trust account was created by his unauthorized use of trust funds for the benefit of himself and/or persons other than the particular client for whom or from whom funds were received.

I. By reason of the foregoing, he misappropriated trust funds.

J. His misuse of trust funds constitutes a violation of 5-1.1, Rules Regulating Trust Accounts.

K. He represented Felipe Sudarsky (hereinafter referred to as "SUDARSKY") in a real estate transaction.

L. Sudarsky is a principal of Percheron, Inc.

M. On or about April 3, 1987 he received from SUDARSKY or on his behalf the sum of ELEVEN THOUSAND DOLLARS (\$11,000.00) in connection with his representation of SUDARSKY (hereinafter referred to as "SUDARSKY trust funds").

N. He deposited the SUDARSKY trust funds into his trust account on April 3, 1987.

O. On April 3, 1987, he issued Check No. 1007 from his trust account, made payable to himself, in the amount of \$500.00 for his attorney's fees in connection with his representation of SUDARSKY.

P. As of April 3, 1987 his trust account client liability in connection with his representation of SUDARSKY was the remaining balance of TEN THOUSAND FIVE HUNDRED DOLLARS (\$10,500.00).

Q. He failed to preserve the remaining balance of the SUDARSKY trust funds in the amount of \$10,500.00 in his trust account for use in connection with the real estate transaction.

R. He utilized the remaining balance of the SUDARSKY trust funds in the amount of \$10,500.00 for other unauthorized purposes.

S. By reason of the foregoing, he misappropriated the SUDARSKY trust funds.

T. His handling of funds he received from or on behalf of SUDARSKY constitutes misappropriation of trust funds in violation of Rule 5-1.1, Rules Regulating Trust Accounts.

U. He represented Frank Alexander (hereinafter referred to as "ALEXANDER") in connection with a personal injury matter arising from an automobile accident.

V. In conjunction with his representation of ALEXANDER, he handled the claim for property damage to the vehicle on behalf of the owner of the vehicle, ALEXANDER'S mother (hereinafter referred to individually as "MRS. ALEXANDER" or in conjunction with ALEXANDER as "ALEXANDERS").

W. During or about June 1987, he entered into an agreement with Liberty Mutual Insurance Company to settle ALEXANDERS claim for the sum of SIX THOUSAND DOLLARS (\$6,000.00).

X. During or about June 1987, he entered into an agreement with Liberty Mutual Insurance Company to settle the property damage claim of MRS. ALEXANDER for the sum of ONE THOUSAND FIVE HUNDRED EIGHTY NINE DOLLARS (\$1,589.00).

Y. He entered into the settlement agreement with the insurance company without the prior knowledge and consent of the ALEXANDERS .

Z. His actions of settling the ALEXANDERS claims without the prior knowledge and consent of the ALEXANDERS constitute a violation of Rules 4-1.2 (a) and 4-1.4 (a) & (b) of the Rules of Professional Conduct.

AA. In June 1987, he received settlement proceeds on behalf of ALEXANDER totalling SIX THOUSAND DOLLARS (\$6,000.00).

BB. Between June 1987 and January 1988 he failed to advise ALEXANDER that he had settled his claim.

CC. Between June 1987 and January 1988 he failed to advise ALEXANDER that he received settlement proceeds on his behalf.

DD. ALEXANDER contacted him subsequent to June 1987 to obtain information concerning the status of his claim.

EE. In response to ALEXANDERS inquiries, he represented to ALEXANDER that the settlement negotiations were proceeding.

FF. He represented to ALEXANDER that the insurance company had offered THREE THOUSAND TWO HUNDRED DOLLARS (\$3,200.00) in settlement.

GG. His representations to ALEXANDER concerning settlement negotiations and an offer were false in that at the time the representations were made, he had already settled ALEXANDERS claim and had received SIX THOUSAND DOLLARS (\$6,000.00) as settlement proceeds.

HH. His failure to advise ALEXANDER of both the settlement of his claim and receipt of settlement proceeds, as well as the misrepresentations to ALEXANDER concerning the status of his claim and constitute a violation of Rules 4-8.4 (c) and 4-1.15 (b) of the Rules of Professional Conduct and Rule 3-4.3 of the Rules of Discipline.

II. Pursuant to the settlement agreement he entered into on behalf of the ALEXANDERS, in June 1987 he received two checks from the insurance company in an aggregate amount of SEVEN THOUSAND FIVE HUNDRED EIGHTY NINE DOLLARS (\$7,589.00) representing settlement proceeds (hereinafter referred to as "ALEXANDER settlement proceeds").

JJ. The ALEXANDER settlement proceeds funds constitute trust funds .

KK. He failed to deposit the ALEXANDER settlement proceeds into his trust account.

LL. His failure to deposit into his trust account the settlement proceeds entrusted to him on behalf of the ALEXANDERS constitutes a violation of Rule 4-1.15(a), Rules of Professional Conduct.

MM. He maintained an office operating account at Continental National Bank of Miami, Miami Florida, Account No. 6-12-44 (hereinafter referred to as operating account).

NN. On June 25, 1987 he deposited the ALEXANDER settlement proceeds into the operating account.

OO. On or about June 25, 1987, he issued Check No. 1140 from the office account, made payable to Prestige Imports, in the amount of FIVE THOUSAND DOLLARS (\$5,000.00).

PP. You issued your check No. 1140 as a deposit for a new car.

QQ. He utilized ALEXANDER settlement proceeds for the benefit of himself or persons other than ALEXANDER, including payment of employees salaries and office operating expenses.

RR. By reason of the foregoing, he misappropriated the ALEXANDER settlement proceeds.

SS. His failure to use ALEXANDER settlement proceeds for the specific purpose for which they were entrusted to him constitutes misappropriation of trust funds in violation fo Rule 5-1.1, Rules Regulating Trust Accounts.

TT. On or about November 15, 1986, he executed a Doctor's Lien to protect the fees of Lawrence Tuchinsky for medical services provided to ALEXANDER from funds received, including settlement proceeds.

UU. Although he received settlement proceeds on behalf of ALEXANDER in June 1987, he did not satisfy the Doctor's Lien.

W. He utilized the ALEXANDER settlement proceeds which were to be used to satisfy the Doctor's Lien for other unauthorized purposes.

WW. He misappropriated the portion of the ALEXANDER settlement proceeds which were to be used to satisfy the Doctor's Lien.

XX. The failure to satisfy the Doctor's Lien from ALEXANDER settlement proceeds and the unauthorized use of said funds constitutes a violation of Rule 5-1.1, Rules Regulating Trust Accounts and Rule 4-1.15(b), Rules of Professional Conduct.

YY. He represented EDUARDO SOTO (hereinafter referred to as "SOTO") in a personal injury matter arising from an automobile accident.

ZZ. On or about October 10, 1986, he executed a Doctor's Lien to protect the fees of David Tuchinsky for medical services provided to SOTO from funds received, including settlement proceeds.

AAA. He negotiated a settlement of behalf of SOTO with Orion Insurance Company.

BBB. Pursuant to the settlement agreement he entered into on behalf of SOTO, in July 1987, he received a check from the insurance company in the amount of THREE THOUSAND TWO HUNDRED DOLLARS (\$3,200.00) representing settlement proceeds (hereinafter referred to as "SOTO settlement proceeds").

CCC. The SOTO settlement proceeds funds constitute trust funds.

DDD. On July 20, 1987, he deposited the SOTO settlement proceeds into the trust account.

EEE. He prepared a settlement statement which provided for payment to you of \$500.00 for your attorney's fee, payment to David Tuchinsky of ONE THOUSAND DOLLARS (\$1,000.00) to satisfy the Doctor's Lien and payment to SOTO of ONE THOUSAND SEVEN HUNDRED DOLLARS (\$1,700.00) which represented the net settlement proceeds due your client, SOTO (hereinafter referred to as "SOTO settlement statement").

FFF. The SOTO settlement statement was executed by SOTO and reflected authorization to disburse SOTO settlement proceeds.

GGG. On July 17, 1988, he issued Check No. 1017 from the trust account, made payable to himself, in the amount of \$500.00 representing the attorney's fees in accordance with the SOTO settlement statement.

HHH. On July 28, 1988, he issued Check No. 2021 from the trust account, made payable to SOTO, in the amount of ONE THOUSAND SEVEN HUNDRED DOLLARS (\$1,700.00) representing the net proceeds due SOTO in accordance with the settlement statement.

III. He failed to issue a check from his trust account for payment to David Tuchinsky in accordance with the settlement statement and Doctor's Lien.

JJJ. He utilized funds in the amount of ONE THOUSAND DOLLARS (\$1,000.00) which were entrusted to him for payment to David Tuchinsky for other unauthorized purposes.

KKK. He misappropriated the portion of the SOTO settlement proceeds which were to be used to satisfy the Doctor's Lien.

LLL. The failure to disburse the SOTO settlement proceeds in accordance with the settlement statement, as well as his misappropriation of funds which were to be used to satisfy the Doctor's Lien constitutes a violation of Rule 5-1.1, Rules Regulating Trust Accounts, and Rule 4-1.15 (b), Rules of Professional Conduct.

MMM. He represented NESTOR GARCIA (hereinafter referred to as GARCIA) in a personal injury matter arising from an automobile accident.

NNN. He negotiated a settlement on behalf of GARCIA with an insurance company.

OOO. On or about November 14, 1986, he executed a Doctor's Lien to protect the fees of Lawrence Tuchinsky for medical services provided to GARCIA from funds received, including settlement proceeds.

PPP. Pursuant to the settlement agreement he entered into on behalf of GARCIA, in or about July 1987, he received a check from the insurance company in the amount of FOUR THOUSAND FIVE HUNDRED DOLLARS (\$4,500.00) representing settlement proceeds (hereinafter referred to as "GARCIA settlement proceeds").

QQQ. The GARCIA settlement proceeds funds constitute trust funds.

RRR. On July 20, 1987, he deposited the GARCIA settlement proceeds into the trust account.

SSS. He prepared a settlement statement dated July 17, 1987 which provided for payment of ONE THOUSAND ONE HUNDRED TWENTY FIVE DOLLARS (\$1,125.00) to you for the attorney's fee and payment to GARCIA of TWO THOUSAND EIGHT HUNDRED AND EIGHTY CENTS (\$2,818.80) which represented the net settlement proceeds due his client, GARCIA (hereinafter referred to as "GARCIA settlement statement").

TTT. Pursuant to the GARCIA settlement statement, \$500.00 was retained by him for payment of GARCIA'S medical bills and \$56.20 was retained by him for payment of 5% sales tax.

UUU. The GARCIA settlement statement was executed by GARCIA and reflected authorization to disburse GARCIA settlement proceeds.

VVV. On July 17, 1988, he issued Check No. 1015 from the trust account, made payable to himself, in the amount of ONE THOUSAND ONE HUNDRED TWENTY FIVE DOLLARS (\$1,125.00) representing the attorney's fee in accordance with the GARCIA settlement statement.

WWW. On July 17, 1988, he issued his Check No. 1014, from the trust account, made payable to GARCIA, in the amount of TWO THOUSAND EIGHT HUNDRED EIGHTEEN DOLLARS AND EIGHTY EIGHT CENTS (\$2,818.88) representing the net proceeds due GARCIA in accordance with the settlement statement.

XXX. He failed to issue a check from his trust account for payment to Lawrence Tuchinsky in accordance with the GARCIA settlement statement and Doctor's Lien.

YYY. He failed to issue a check from his trust account for payment of the sales tax in accordance with the GARCIA settlement statement.

ZZZ. He utilized funds in the amount of \$556.20 which was entrusted to him for payment of medical bills and sales tax for other unauthorized purposes.

AAAA. He misappropriated the portion of the GARCIA settlement proceeds which were to be used to satisfy a Doctor's Lien and to pay sales tax.

BBBB. The failure to disburse the GARCIA settlement proceeds in accordance with the settlement statement, as well as his misappropriation of funds which were to be used to satisfy the Doctor's Lien and to pay sales tax constitutes a violation of Rule 5-1.1, Rules Regulating Trust Accounts and Rule 1-1.15(b), Rules of Professional Conduct.

I.. This referee finds that the respondent should be found guilty of misconduct of the above violations and misconduct which does justify disciplinary measures.

II . This referee's recommendations as to the disciplinary measures to be applied. It is noted that in mitigation the respondent called five witnesses.

A. Dr. John Eustace, M.D. the Director of the Mt. Sinai Medical Centers Chemical Dependency Treatment Unit and a Board Certified Additionologist diagnosed the respondent to be chemically dependant on alcohol and cocaine at the time of the above violations. The respondent has been a drug abuser since he was 10 years old. Dr. Eustace has been supervising respondent's medical care which has consisted of detoxification, voluntary long term treatment including in-hospital extended treatment at COPAQ, supervised by Florida Lawyers Assistance, this and Alcoholic's Anonymous and Narcotics Anonymous. Dr. Eustace testified the addiction was the cause of the respondents disciplinary violation and that the respondent's prognosis for recovery was excellent.

B. William Kilby, Esquire, the staff attorney for F.L.A. Inc. testified that the respondent was under contract with them, they have been supervising him and he has been in full compliance. Their program includes: 1-Random drug testing, 2-Professional support groups and 3-Narcotics and Alcoholics Anonymous.

C. The Honorable Catherine Pooler, Dade County Court Judge and the Honorable Roy T. Gelber, Circuit Judge of the 11th Circuit both testified the respondent was an excellent and competent attorney and of good moral character.

The respondent testified he was admitted to the Florida Bar in December, 1985 and had been practicing one year when the violation occurred. He showed deep remorse and an understanding of his disease.

In mitigation of the respondents violations the referee finds:

1. An absence of any prior disciplines.
2. Great personal and emotional problems including his disease of addiction, his impairment and his family and material problem.
3. A timely and good faith effort at restitution made to all clients. Moneys owed to Dr. Lawrence Tuchinsky and Dr. David Tuchinsky are still owed, although a recent plan of repayment has been made.
4. Cooperation with the Bar in that a probable cause hearing was waived and an unconditional guilty plea was entered in the proceeding.
5. His inexperience in the practice of law, that being a total of one year.
6. His character and reputation were good as testified to by two Judges.
7. He was clearly mentally impaired due to his addiction.
8. He has been seriously, productively and successfully involved in rehabilitation for over one (1) year.
9. He has expressed and shown remorse which this referee feels to be genuine.

Based upon the foregoing, the referee recommends the following disciplinary action.

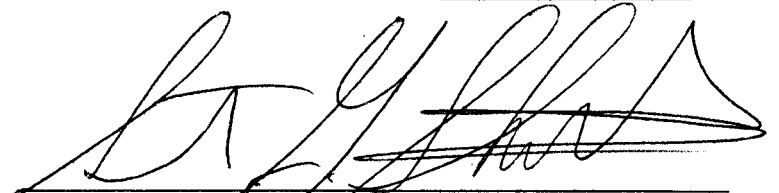
1. That the respondent be suspended from the practice of law for eighteen (18) months effective immediately and thereafter until he proves rehabilitation and payment of all restitution and costs assessed pursuant hereto.

2. Thereafter, he shall be on probation for thirty (30) months. As conditions of his probation he shall not have use of any trust accounts and shall be under the supervision of F.Z.A. Inc.

3. He shall perform one hundred (100) hours of community service.

4. He shall pay costs of this proceeding of \$ 2956.10.

*July 10, 1989*



STEVEN G. SHUTTER, COUNTY COURT JUDGE  
(REFEREE)

DATED: \_\_\_\_\_

cc: Patricia Etkin, Esq.  
Richard Baron, Esq.