

FILED

SID J. WHITE

APR 5 1989

IN THE SUPREME COURT OF FLORIDA

(Before a Referee)

CLERK, SUPREME COURT

By _____
Deputy Clerk

The Florida Bar,
Complainant,
vs.
William A. Borja,
Respondent.

CONFIDENTIAL

Case No. 72,962
TFB No. 86-16,453 (06A)
(formerly 06A86140)

REPORT OF REFEREE

Introduction

This matter is before the Court on a complaint filed by the Florida Bar (the "**Bar**") against William A. Borja ("**Borja**"). The Bar contends that Borja violated the following provisions of the Rules Regulating the Florida Bar:

Rule 5-1/2(b)(5) regarding maintenance of certain receipts and journals

Rule 5-1.2(b)(6) regarding maintenance of ledger cards

Rule 5-1.2(c)1.b regarding trust account procedures

Rule 4-1.15(a) regarding separation of funds

Rule 5-1.1 regarding funds held in trust for a specific purpose.

Borja essentially responds that he was in substantial compliance with the foregoing rules. These alleged violations arose out of Borja's representation in the Estate of Frank Libertini; the complaint was initially made by another lawyer also involved in the estate case.

On December 15, 1988, this matter was heard by the Court. The Court heard the testimony of the Bar's accounting expert, Borja's clients, and Borja. Moreover, the Court extensively reviewed the accounting documentation submitted by counsel and reviewed a detailed accounting analysis of Borja's records submitted by the Bar.

Findings

The Court finds that this investigation was initiated by the complaint of an adversarial lawyer in an estate case; the complaining lawyer did not appear before the Court. Evidence was presented suggesting that the initial complaint was filed by the opposing lawyer in an attempt to pressure Borja to compromise his professional fees. Nonetheless, the Bar then began its investigation.

Borja was subjected to intense scrutiny by the Bar for all of his accounting records. With respect to the instant complaint, Borja admits that a \$10,000.00 check was improperly drawn on a trust account rather than the appropriate estate account. However, all funds were properly directed -- all parties received amounts due to them.

The Bar further alleges various accounting irregularities, including the failure to maintain certain documents. The Court finds that Borja employed the services of a professional accountant and that certain records were retained by the accountant and not returned to Borja. The Court finds that Borja has diligently undertaken remedial measures concerning record keeping and accounting procedures. Certain claims with respect to missing records are without merit in that Borja relied on his accountant to maintain these records.

A primary goal of The Rules Regulating the Florida Bar is to guide lawyers and provide a method for remedial measures upon certain violations. Here, Borja may have been responsible for certain technical violations of the Rules that generally concern trust accounting. The evidence is clear that no party was injured by these technical violations, that Borja relied on the services of an accountant, and that Borja has instituted procedures to guard against future violations. Indeed, the evidence presented through the testimony of Denise DiGuiccio, a client of Borja,

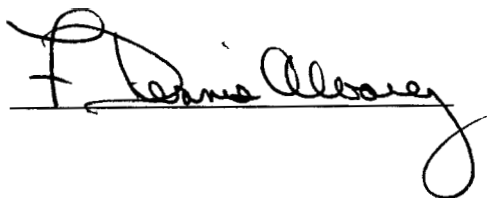
shows that Borja is diligent and nearly honest to a fault in dealing with client billings.

In summary, Borja was in substantial compliance with the Rules the Bar raised in its complaint. The Court, however, by this finding, does not suggest that the Rules concerning trust accounts are mere formalities. Trust accounts are indeed among the sacred trusts that a client vests with an attorney. Such trusts must not be treated with triviality or impatience. The Court is assured that Borja recognizes his responsibility to appropriately follow the spirit, as well as the letter of the accounting procedures mandated by the Bar.

The Court finds substantial compliance with the other Rules that Borja is alleged to have violated.

IT IS THEREFORE RECOMMENDED that Borja was in substantial compliance with the Rules cited by the Bar in the complaint filed herein, and is accordingly NOT GUILTY of the alleged violations.

Having found Borja not guilty, no discipline is recommended. Each party herein shall be responsible for its own costs.

A handwritten signature in black ink, reading "F. Dennis Alvarez", written over a horizontal line. The signature is cursive and includes a large, looping flourish at the end.

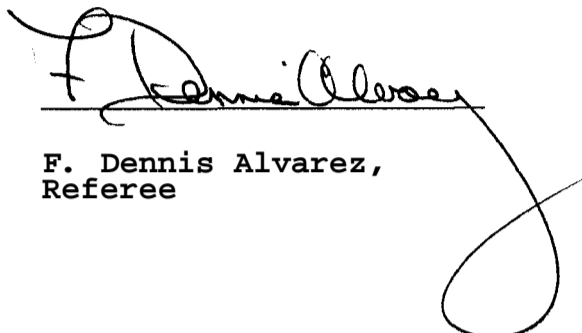
F. Dennis Alvarez,

Referee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a **copy** of the foregoing **was** forwarded this Seventeenth Day of March, 1989, to Bonnie L. Mahon, Assistant Staff Counsel, The Florida Bar, Suite C-49, Tampa Airport Marriott Hotel, Tampa, Florida, 33607, and

Harry M. Hobbs, Esq., Counsel for Respondent, 725 E. Kennedy
Boulevard, Suite 100, Tampa, Florida, 33602.



F. Dennis Alvarez,
Referee

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