

W O O A

IN THE SUPREME COURT OF FLORIDA

FILED
MAR 00 1988

THE (FLORIDA BAR,
Complainant,
v.

Case No. 73,241
TFB No. 88-00,179(06E)

GORDON B. SCOTT,
Respondent.

COMPLAINANT'S BRIEF AS TO DISCIPLINE

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SYMBOLS AND REFERENCES

The Florida Bar, Complainant, files this Brief **As** to Discipline in the case against GORDON B. **SCOTT**, hereinafter referred to as Respondent. References to the hearing on April 25, 1989 will be designated (TR - page number). References to the hearing on June 23, 1989 will be designated (TR II and the appropriate page number). References to Bar exhibits introduced as evidence at the hearing will be designated (BE - number). References to the Report of the Referee will be designated (RR - page number) .

STATEMENT OF THE CASE AND OF THE FACTS

As previously set forth in the Complainant's Answer Brief, the Statement of the Case and of the Facts are as follows:

Respondent's misconduct arose from his association with Stanley A. Lowe, Sr. and the transfer of properties owned by Mr. Lowe.

Between 1977 and 1981, Respondent and Stanley A. Lowe, Sr. were close friends and occasional roommates. (TR-58). During the aforementioned time period, Mr. Lowe owned several pieces of property in Pinellas County, Florida.

Prior to November 3, 1978, Mr. Lowe and his former wife owned certain property as tenants in common. On November 3, 1978, Mr. Lowe conveyed his interest in this property to Respondent. Respondent gave no consideration to Mr. Lowe for the transfer of property. (TR-61, line 13). The transfer was for the purpose of Mr. Lowe avoiding creditors and the Respondent knew this was the purpose of the transfer. (RR-2).

On November 3, 1978, Mr. Lowe also transferred to Respondent Mr. Lowe's interest in a separate piece of property. (BE-2). This transaction was also for the purpose of Mr. Lowe avoiding creditors. Respondent paid no consideration to Mr. Lowe for this transfer and knew that this transfer was for the purpose of Mr. Lowe avoiding creditors. (TR-6).

At the time of the aforementioned transfers, Mr. Lowe

prepared Quit Claim Deeds whereby Respondent was to transfer the properties back to Mr. Lowe at Mr. Lowe's request. The Respondent denied that any such Quit Claim Deeds were ever prepared. The Referee specifically found the Respondent was not being entirely truthful in regard to this matter. (RR-2).

On May 1, 1979, Respondent sold the second piece of property mentioned above and received a check in the amount of \$53,109.94 from the sale of the property. At the final hearing in this matter, Respondent testified that the money was never deposited in his bank account, that he received none of the proceeds and that the money went to Mr. Lowe. (TR-65). The check, however, was endorsed by Respondent and does not reveal that it was made payable to the order of Stanley Lowe. (BE-5).

On July 21, 1980, Mr. Lowe transferred a third piece of property to Respondent. At the time of this transfer, Mr. Lowe prepared a Quit Claim Deed whereby Respondent was to transfer the property back to Mr. Lowe at Mr. Lowe's request. Respondent again paid no consideration to Mr. Lowe for the transfer of this property. At the final hearing, Respondent testified that no Quit Claim Deed existed for this transfer. (TR-75, line 19). The Referee specifically found Respondent's testimony to be less than entirely truthful in regard to this issue. (RR-2).

After Mr. Lowe died on August 22, 1981, Respondent continued to claim ownership of the properties which had been transferred to him by Mr. Lowe. (TR-68). Subsequently, Respondent wrote Mr.

Lowe's sons and told them that their father had left no assets with which to open an estate.

Eventually, Mr. Lowe's two (2) sons learned of the existence of the properties which had been transferred to Respondent by Mr. Lowe and they filed suit against Respondent to recover the properties. The suit was settled by Respondent paying Mr. Lowe's sons the proceeds realized from the sale of the properties which formerly belonged to Mr. Lowe. (RR-2).

The Board of Governors of The Florida Bar initially voted not to seek review of the Referee's recommendation of a ninety-one (91) day suspension. However, upon receipt of the Court's Order dated March 1, 1990, requesting Briefs as to discipline, this matter was resubmitted to the Executive Committee of The Florida Bar who voted to recommend a three (3) year suspension. The Florida Bar recognizes that while the ninety-one (91) day suspension is within the range of discipline, that a three (3) year suspension would be more appropriate. The Florida Bar is also aware of those factors which may have influenced the recommendation of former bar counsel to the Referee, i.e., the remoteness of the time of the misconduct herein. However, after a re-examination of the allegations herein, a three (3) year suspension is recommended.

SUMMARY OF ARGUMENT

The Referee found Respondent guilty of conduct that was dishonest and deceitful in obtaining Stanley Lowe, Sr.'s properties for the purpose of defrauding creditors of Mr. Lowe. Respondent paid no consideration for the properties. The Referee further found that Mr. Lowe had prepared Quit Claim Deeds whereby Respondent was to transfer the properties back to Mr. Lowe at Mr. Lowe's request.

After Mr. Lowe's death, Respondent claimed ownership of the properties (with the exception of the property already sold) until challenged by Mr. Lowe's sons. The Respondent claimed as an affirmative defense that Stanley Lowe, Sr. had transferred the property to avoid creditors, and thus, Mr. Lowe's sons could not take the property as they stood in their father's place.

Respondent's fraudulent conduct in conspiring with Mr. Lowe was not an isolated instance. There were two (2) separate transfers of property. Respondent did nothing to discourage the misconduct. Moreover, Respondent attempted to keep the property for himself after the death of Mr. Lowe. But for the remoteness in time of the misconduct? disbarment would be an appropriate discipline. However, taking into consideration all factors, a three (3) year suspension is more appropriate.

ARGUMENT

ISSUE: WHETHER A THREE (3) YEAR SUSPENSION IS
 APPROPRIATE FOR AN ATTORNEY WHO CONSPIRED
 TO AND THEN TRANSFERED PROPERTIES TO DEFRAUD
 CREDITORS AND THEN ATTEMPTED TO KEEP THE
 PROPERTY FOR HIMSELF.

The Florida Bar's previous recommendation for a ninety-one (91) day suspension is within the range of appropriate discipline. As previously stated in the Complainant's Answer Brief, in the case of The Florida Bar v. Shupack, 523 So.2d 1139 (Fla. 1988), Shupack was given a ninety-one (91) day suspension for fraudulently recording the purchaser's mortgage before the vendor's mortgage. Shupack and the Respondent both violated their duty as professionals by assisting in a scheme to defraud- Shupack by recording the purchaser's mortgage before the vendors, and Respondent by allowing Mr. Lowe to transfer property to him for the purpose of defrauding creditors.

However, upon re-examination, it becomes apparent that the conduct herein is more aggravated than in Shupack. Unlike Shupack, Respondent participated in the fraudulent conveyance of three (3) separate properties in two (2) separate transactions which took place over a year and a half apart.

Also, the Shupack case does not reflect any pecuniary gain or interest by Shupack in the property. Whereas, the Respondent herein attempted to keep the property for himself after Mr. Lowe's death. The Referee's finding that Respondent was less

than credible further aggravates the seriousness of Respondent's misconduct.

In reviewing the Standards For Imposing Lawyer Sanctions, Rule 7.2 states that "suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system." The Referee found that the Respondent knew that the transfers of property were for the purpose of Mr. Lowe avoiding creditors. Such knowledge by the Respondent evidences a direct violation of a lawyer's duty not to participate in fraudulent conduct. Respondent's conduct also caused injury to both individuals and the legal system.

By way of mitigation, the Referee found that the Respondent had a good reputation in the Public Defender's Offices for the Second and Sixth Judicial Circuits. (RR-p.3).

The Referee further found the following aggravating factors: Respondent's lack of credibility at the Final Hearing; Respondent's refusal to acknowledge the wrongful nature of his conduct; and Respondent's dishonest and selfish motive.

(RR-p.3). As stated in Rule 9.21 of the Florida Standards For Imposing Lawyer Sanctions, "aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed." Accordingly, a three (3) year suspension is an appropriate discipline.

While The Florida Bar was unable to find any case law

supporting a three (3) year suspension, it was, likewise, unable to find any case law with as aggravated a factual scenario as herein.

The Respondent conspired with Mr. Lowe to transfer property to the Respondent to defraud Mr. Lowe's creditors. Mr. Lowe transferred two (2) properties to the Respondent in November of 1978. The Respondent gave no consideration to Mr. Lowe for the transfer of the properties. The Referee specifically found that the Respondent knew that the transfers were for the purpose of avoiding creditors. (RR-p.2). Further, Mr. Lowe had prepared quit claim deeds whereby the Respondent was to transfer the properties back to Mr. Lowe at Mr. Lowe's request.

In May, 1979, the Respondent sold the Island Estates property. Respondent received a check in the amount of \$53,109.94 from the sale. The check was endorsed by the Respondent and does not reveal that it was made payable to the order of Stanley Lowe. (BE-5).

On July 21, 1980, more than a year and a half after the first fraudulent conveyances, Mr. Lowe transferred yet a third piece of property to the Respondent. At the time of this transfer, Mr. Lowe prepared a quit claim deed whereby the Respondent was to transfer the property back to Mr. Lowe at Mr. Lowe's request. The Respondent, again, paid no consideration to Mr. Lowe for the property.

After Mr. Lowe died on August 22, 1981, Respondent continued

to claim ownership of the properties which had been transferred to him by Mr. Lowe. (TR-68). Subsequently, the Respondent wrote Mr. Lowe's sons and told them that their father had left no assets with which to open an estate.

Eventually, Mr. Lowe's two (2) sons learned of the existence of the properties which had been transferred to the Respondent by Mr. Lowe, and they filed suit against the Respondent to recover the properties. In the lawsuit, Respondent asserted, as an affirmative defense, that Mr. Lowe had transferred the property to him to avoid creditors. The Respondent claimed that he asserted this affirmative defense so that Mr. Lowe's sons, who stood in their father's place, would be precluded from taking the property, as they would have unclean hands as did their father and be prevented from asserting a constructive trust on the Respondent's part. The suit was settled, with the Respondent paying Mr. Lowe's sons the proceeds realized from the sale of such properties.

Respondent's continued course of fraudulent misconduct, coupled with his selfish attempt to keep the property for himself after Mr. Lowe's death, is deserving of a three (3) year suspension.

CONCLUSION

Respondent conspired with Mr. Lowe to transfer properties to the Respondent to avoid Mr. Lowe's creditors. Respondent paid no consideration for the properties. Respondent knew that the transfers were to avoid Mr. Lowe's creditors. Mr. Lowe transferred three (3) properties to Respondent in two (2) transactions over a year and a half apart.

After Mr. Lowe's death, the Respondent attempted to keep the property for himself. Respondent further sought to keep Mr. Lowe's two (2) sons from getting the proceeds from the property.

Accordingly, it is requested that the Respondent be disciplined by a three (3) year suspension.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Complainant's Brief As to Discipline has been furnished by U. S. Regular Mail to John Weiss, Counsel for Respondent at 101 North Gadsden Street, Post Office Box 1167, Tallahassee, Florida 32303; and a copy to John T. Berry, Staff Counsel, The Florida Bar, Ethics and Discipline Department, 650 Appalachee Parkway, Tallahassee, Florida, 32399-2300, this 29th day of March, 1990.

David R. Ristoff

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