

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,  
Complainant,

vs.

ALBERT E. GUSTAFSON,  
Respondent.

Supreme Court Case No.  
73,406

The Florida Bar Case No. 88-70,867 (11K)  
and 88-70,917 (11K)

**FILED**

SID J. WHITE

JUN 14 1989

CLERK, SUPREME COURT

By \_\_\_\_\_  
Deputy Clerk

**REPORT OF REFEREE**

I. **SUMMARY OF PROCEEDINGS:** Pursuant to the undersigned being duly appointed as Referee for the Supreme Court of Florida to conduct proceedings as provided for by Rule 3-7.5 of the Rules Regulating The Florida Bar, (article XI, Rule 11.06 of the Integration Rule of The Florida Bar), the Rules Regulating The Florida Bar, a Final Hearing was held in the Broward County Courthouse before the undersigned, on May 22, 1989. All of the pleadings, transcripts, notices, motions, orders and exhibits are forwarded with this report and the foregoing constitutes the record of the case.

The following attorneys acted as counsel for the parties:

For The Florida Bar: Randi Klayman Lazarus  
Suite 211, Rivergate Plaza  
444 Brickell Avenue  
Miami, Florida 33131

For the Respondent: Albert E. Gustafson, pro se  
11507 S.W. 172nd Terrace  
Miami, Florida 33157

II. **FINDINGS OF FACT:** I find Respondent guilty of all allegations contained in Count I of the Bar's Complaint which I hereby accept and adopt as the findings in the cause, to wit:

1. That Respondent represented Alexander S. Martin (hereinafter referred to as "A. Martin") in various business matters.

2. That Respondent prepared a contract which was entered into by A. Martin and Sam Young (hereinafter referred to as "Young"), dated January 18, 1988.

3. That the aforementioned contract prepared by Respondent contained the following language in Article III b:

"Albert E. Gustafson, Esquire shall act as the escrow agent for original contribution of funds as specified under Article I a, until such time as funds pursuant to Article II b, are disbursed amongst the herein contained parties."

and the following language in Article II c:

"Subject to the terms and conditions specified in Article II a., if after a period of more than 14 days from the date that the restriction on said stock expires and said stock has not been sold in the market, assignee shall have the the right to demand return of said proceeds contributed for participation in the transaction, and shall thereafter relinquish all interest in proceeds realized from the transaction that may occur at a later time.

4. That the aforementioned contract provisions clearly provided that Young had up to fourteen days to withdraw from the Contract, and thereafter could withdraw if the stock had not been sold thereby relinquishing any right to future profits.

5. That Respondent, signed an agreement dated January 18, 1988 prepared by George Blutsteiri (hereinafter referred to as "Blutstein") attorney for Young stating that Respondent would hold the funds, specifically Sixteen thousand dollars (\$16,000.00) in an escrow account for the parties.

6. That Respondent after signing this agreement executed between himself and Blutstein accepted a check from Young payable to Respondent, Albert E. Gustafson, Esquire Trust Account in the amount of Sixteen thousand dollars (\$16,000.00) dated January 20, 1988 (Check number 243, Barnett Bank, North Miami Beach).

7. That Respondent did not have a trust account.

8. That on the same day Respondent received Young's check, Respondent accompanied by A. Martin cashed said check at Young's bank (Barnett Bank, 9190 Biscayne Boulevard, Miami Shore, Florida).

9. That Respondent obtained a cashier's check from Barnett Bank in the amount of Sixteen thousand (\$16,000.00).

10. That Respondent after receipt of the cashier's check from Barnett Bank went to Glendale Federal Bank and signed the cashier's check over to Ms. Maria T. Buchhorst (hereinafter referred to as "Buchhorst") where it was deposited in her personal account.

11. That Respondent did not have signatory power on Buchhorst's account.

12. That Respondent's action of placing the funds within Buchhorst's account had the effect of relinquishing all control over Young's money since Respondent had no signatory power over Buchhorst's account.

13. That neither Young nor his attorney Blutstein, authorized Respondent to place Young's funds in Buchhorst's account.

14. That Respondent failed to return the funds to Young when requested by him on the same day they entered into the contract.

15. That Respondent advised Blutstein he would attempt to persuade A. Martin to return Young's money if Respondent was given a portion of the monies.

16. That Respondent did initiate a lawsuit against Young for slander and defamation regarding the substance of this matter. [Case No. 88-04911(4)]

17. That Young counterclaimed in the lawsuit alleging conversion.

18. That the Judge in the civil action ordered Respondent to place Young's monies in the Court Registry.

19. That Respondent did not place Young's monies in the Court Registry pursuant to Court order.

20. That a judgment in favor of Young has been entered in Case No. 88-04911(14) for \$48,000.00, in treble damages.

21. That on or about June 23, 1988, Carlos J. Ruga, The Florida Bar Staff Auditor after serving subpoenas for Buchhorst's bank records on Glendale Federal Bank, completed an audit of the bank account of Buchhorst.

22. That the aforementioned audit covered all recorded transactions occurring between December 21, 1987 and May 3, 1988, the period in which the account was opened until the date in which it was closed.

23. That the Buchhorst account does not constitute an attorney trust account.

24. That the audit revealed that on or about January 20, 1988 a deposit in the amount of Sixteen thousand dollars (\$16,000.00) was recorded in Buchhorst's account, said \$16,000.00 being Young's funds.

25. That at the time the funds were deposited the account balance was \$1,562.39.

26. That after a period of five days the account balance was \$1,523.95, having completely used Young's funds.

I find Respondent not guilty of all allegations contained in Count II of the Bar's Complaint.

**III. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE IMPOSED:**

I recommend that Respondent be suspended from the practice of law for a period of three years, make Restitution to Sam Young in the amount of \$16,000.00 plus interest at a rate of 12% to accrue from the time Respondent received the funds until the time the funds are actually paid to Samuel Young, retake and pass the Ethics portion of the Bar Exam, and attend a Continuing Legal Education course on ethics. This Referee did not recommend disbarment because of Respondent's relative inexperience as a practicing attorney. Respondent was admitted to practice in 1985.

**IV. RECOMMENDATION AS TO GUILT:** I find that as to Count I, Respondent has violated 4-1.15 (a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive), 4-3.4(c) (a lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists), Rule 4-8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation) of the Rules of Professional Conduct; 5-1.2(b), (money entrusted to an attorney for a specific purpose

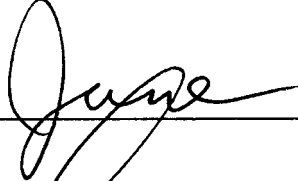
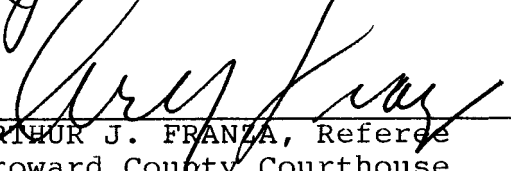
is held in trust and must be applied only to that purpose) of the Rules Regulation Trust Accounts.

V. RECOMMENDATION AS TO COSTS: I find the following costs to have been reasonably incurred by The Florida Bar:

Administrative Charge [Rule 3-7.5(k) (1)] .....	\$ 500.00
Auditor's Costs .....	618.40
Certified Copies (paid to Clerk of the Circuit Court) ....	111.00
Court Reporter's attendance & transcript (Grievance Committee hearing held 7/19/88) .....	385.00
Court Reporter's attendance & transcript (Final Hearing held May 22, 1989) .....	745.60
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<b>TOTAL COSTS:</b>	<b><u><u>\$2,360.00</u></u></b>

5. It is further recommended that execution issue with interest at a rate of twelve percent (12%) to accrue on all costs not paid within thirty (30) days of entry of the Supreme Court's final order, unless time for payment is extended by the Board of Governors of The Florida Bar.

Dated this 8<sup>th</sup> day of June, 1989.

  
  
ARTHUR J. FRANZA, Referee  
Broward County Courthouse  
201 S.E. 6th Street  
Fort Lauderdale, Florida 33301

Copies furnished to:  
Randi Klayman Lazarus, Bar Counsel  
Albert E. Gustafson, pro se