

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,  
Complainant,

Supreme Court Case No. 73,518

The Florida Bar  
File No. 89-70,051(11E)

v.

JAMES G. ROTH,  
Respondent.

**FILED**

SID J. WHITE

SEP 18 1989

CLERK OF THE SUPREME COURT

Deputy Clerk

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS

On January 13, 1989, the Chief Justice of the Supreme Court of Florida appointed the undersigned to serve as Referee in this case.

On August 10, 1989 the following attorneys acted as counsel for the parties at the final hearing:

For The Florida Bar: Paul A. Gross of Miami

Jo-Ann Braverman of Miami

For the Respondent: James G. Roth, pro se of Miami

11. FINDINGS OF FACT: Respondent was retained by a Mrs. Sharek to represent her in the sale of a piece of property. On or about June 9, 1986 Respondent received a \$2,000.00 cashier check from a prospective buyer which was to be deposited in Respondent's trust account pending the closing of the sale. Respondent held onto the check and never deposited the \$2,000.00 in his trust account. The closing fell through and a dispute arose between Respondent's client and the purchaser as to whom the \$2,000.00 deposit belonged to under the contract. On November 3, 1986, Respondent

filed an interpleader action to determine the conflicting demands on the \$2,000.00. On July 7, 1988, the interpleader action was dismissed for lack of prosecution. From November 1986 through August 10, 1989, Respondent never returned telephone calls or answered letters inquiring about the status of the \$2,000.00.

111. RECOMMENDATION AS TO GUILT. I find Respondent guilty of violating 4-1.3 (diligence) and Rule 4-1.4 (communication) of the Rules Regulating The Florida Bar. I find Respondent not guilty of violating Rules 4-1.15(B) (safekeeping property) and Rule 5-1.1 (trust accounts) of the Rules Regulating The Florida Bar.

#### IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE IMPOSED

In making this finding, I have considered the testimony of all witnesses and argument of counsel.

While a public reprimand may ordinarily be the appropriate discipline imposed for the type of misconduct committed, I do not believe that a public reprimand is warranted in this case due to mitigating circumstances.

Respondent was experiencing personal problems during the time in question, including the illness of his mother who had a long period of hospitalization and died on October 28, 1988. Furthermore, there is no evidence that Respondent's misconduct is an ongoing problem or misconduct that can not be rectified by a sanction less severe than a public reprimand. Accordingly, I recommend the following:

1. A private reprimand to be administered by Grievance Committee 11"E".

2. Probation for a minimum of one year.

3. That the Respondent shall resolve the problem of who is entitled to the \$2,000 check. This may be done by mutual agreement of the interested parties or by filing an interpleader action in the appropriate court.

4. That the Respondent shall pay 12% interest per year on the \$2,000 from June 9, 1988 to the date the check is given to the person who is entitled to receive it.

5. Within 60 days of the date this Report of Referee is approved by the Supreme Court of Florida, the Respondent shall have a certified public accountant audit his trust account, at his own expense, and a report of the audit shall be delivered to The Florida Bar.

6. Within 60 days of the date of this report shall be approved by the Supreme Court, the Respondent shall establish a procedure and form for sending documents to clients and for informing them of the status of their cases, and said procedure and form shall be sent to The Florida Bar, forthwith.

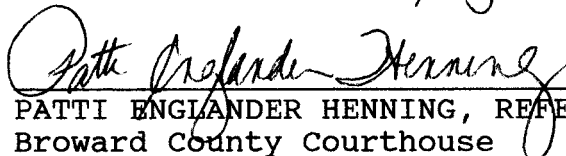
7. That the Respondent shall be responsible for payment of all costs and expenses incurred by The Florida Bar.

While I recommend that the personal difficulties which Respondent was undergoing should preclude the need for a public reprimand, I leave it to the Supreme Court's ultimate wisdom to decide whether Respondent should receive a private reprimand.

IV. RECOMMENDATION AS TO COSTS:

Administrative Costs	\$500.00
Court Reporter Costs Hearing held November 14, 1988	120.35
Bar Counsel Travel Costs	33.74
Court Reporter Costs Hearing held August 9, 1989	297.50
Total	951.59

Respectfully submitted this 12 day of September,  
1989.

  
PATTI ENGLANDER HENNING, REFEREE  
Broward County Courthouse  
201 S.E. Sixth Street  
Ft. Lauderdale, Florida

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing Report of Referee were mailed this 12 day of September, 1989 to the following attorneys:

- ✓ James G. Roth  
420 Lincoln Road  
Suite 329  
Miami Beach, Florida 33139
- ✓ Jo-Ann Braverman and  
Paul A. Gross, Co-Bar Counsel  
The Florida Bar  
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Miami, Florida 33131

✓ John A. Boggs  
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The Florida Bar  
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PATTI ENGLANDER HENNING, REFEREE