IN THE SUPREME COURT OF FLORIDA"

THE FLORIDA BAR,

COMPLAINANT,

v.

LAURENCE GOLDEN,

RESPONDENT.

SUPREME COURT CASE NO. 73,553

TFB CASE NO. 88-51,160(17C)

INITIAL BRIEF OF THE FLORIDA BAR

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PREFACE

For purposes of this brief, the complainant, The Florida Bar, will be referred to as The Florida Bar and Laurence Golden will be referred to as the Respondent.

Abbreviations utilized in this brief as follows:

"RR" refers to the Report of Referee

"T" refers to the Transcript of final hearing held on June 26, 1989.

"E" refers to exhibits introduced at the final hearing

STATEMENT OF THE CASE AND FACTS

A formal complaint and The Florida Bar's first Request for Admissions were filed on January 12, 1989. The Honorable S. Peter Capua was appointed Referee on January 19, 1989. The Respondent answered the Complaint and Request for Admissions on February 11, 1989.

On February 22, 1989, The Florida Bar forwarded its First Set of Interrogatories and its Request to Produce. On April 13, 1989, The Florida Bar filed its Motion to Compel. On May 4, 1989, a status hearing and a hearing on The Florida Bar's Motion to Compel was held. An order was entered on May 19, 1989 requiring Respondent to explain why he had not complied with The Florida Bar's Request to Produce.

The final hearing in this cause was held on June 26, 1989. On July 31, 1989, the Referee entered his Report which found the Respondent guilty and recommended suspension for a period of two (2) years to run consecutive with the three (3) year suspension Respondent had received regarding insurance fraud in The Florida Bar v. Golden 544 So.2d 1003 (Fla. 1989).

The Referee, in his Report (attached hereto as Appendix I) made the following findings of fact:

> 1. Respondent 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.
>
> 2. On, or about July 24, 1985, the Respondent represented a client, SHIH WU, who entered into a contract to buy certain vacant real property from one NUZZO who had an option to purchase the property in

question (Exhibit 1 in evidence).

3. The contract provided for the 10% escrow deposit of $22,500.00 to be held in escrow by the Respondent. I find that Respondent received and held said $22,500.00 as escrow agent in this transaction. (Exhibits 1,2,5, testimony of LEROY THAYER, Exhibit 16).

4. The contract provided that the deposit was to be liquidated damages in case of a breach of contract by the buyer, SHIH WU (Exhibit 1).

5. Prior to the closing of the contract, on/or about August 21, 1985, Respondent and his client terminated the contract alleging bad title (Exhibit 3).

6. I find that the Respondent wrongfully returned the funds he held in escrow on September 9, 1985, after he was on notice that the funds were in dispute and GEORGE PATTERSON, Esquire had demanded the release of the funds or that said funds be interpleaded with the Court (Exhibits 4,6,7,10,11,12,13,14 and 15.).

7. I find that by wrongfully returning the $22,500 he held in escrow, Respondent violated his duties as a fiduciary and escrow agent.

8. I find that Respondent acted in bad faith when he attempted on August 21, 1989, to negotiate with WILLIAM STOCKMAN, Esquire, the attorney for the party who owned the property in issue, to purchase the property directly from Mr. STOCKMAN's client in an attempt to interfere with the NUZZO contract and with the stated motive of getting a nice fee for himself (testimony of WILLIAM STOCKMAN, Esquire, Exhibit 17).

9. I find that Respondent acted in bad faith and falsely represented on August 28, 1985, to JACKIE JERNIGAN, a secretary of GEORGE PATTERSON, Esquire, that he had already returned the $22,500.00 deposit monies to his client, when in fact such monies were not returned until September 9, 1985 (testimony of JACKIE JERNIGAN, Exhibits 6, 7, 15).

The Referee found that the Respondent violated Florida Bar Integration Rule, article XI, Rule 11.02(4) (money entrusted for a specific purpose must be applied only for that purpose) and

Disciplinary Rule 1-102(A)(4) (A lawyer shall not engage in conduct involving dishonesty fraud, deceit or misrepresentation) of the code of Professional Responsibility (RR, Page 3).

The Respondent possesses a history of prior discipline with The Florida Bar. The Respondent received a suspension for a period of three (3) years. The Florida Bar v. Golden, 544 So.2d 1003 (Fla. 1989).

The Referee found that the following aggravating factors were present in this case:

a. Prior disciplinary offense
b. Dishonest or selfish motive
c. A pattern of misconduct
d. Refusal to acknowledge wrongful nature of conduct (RR, Page 3).

SUMMARY OF ARGUMENT

THE DISCIPLINE TO BE IMPOSED IN THIS CAUSE SHOULD BE DISBARMENT FOR A PERIOD OF FIVE (5) YEARS

The referee found that the respondent improperly disbursed escrow funds to his client after he was on notice that the funds were in dispute and that the respondent acted in bad faith on more than one occasion.

Respondent's prior disciplinary action and criminal case regarding insurance fraud constitutes cumulative misconduct. The Florida Bar v. Golden, 544 So.2d 1003 (Fla. 1989), The Florida Bar v. Bartlett, 509 So.2d 287 (Fla. 1987). The Referee found several aggravating factors present in this cause. Standard 7.1 of the Standards for Imposing Lawyer Sanctions mandates disbarment in this cause.

Based upon the seriousness of his misconduct, the cumulative misconduct and the aggravating factors, disbarment is appropriate to be imposed in this cause.

ARGUMENT

THE DISCIPLINE TO BE IMPOSED IN THIS CAUSE SHOULD BE DISBARMENT FOR A PERIOD OF FIVE (5) YEARS

This Court has stated that it is not bound by the Referee's recommendation for discipline. The Florida Bar v. Weaver, 356 So.2d 797 (Fla. 1978). Respondent's misconduct was wholly inconsistent with the professional standards of the legal profession. Disbarment, is, therefore, more appropriate than the disciplinary sanction of suspension recommended by the Referee.

The Referee in his findings of fact found in pertinent part: (1) that Respondent wrongfully returned funds to his client that he held in escrow after he was on notice that the funds were in dispute and opposing counsel had demanded the release of said funds, (2) that respondent violated his duties as fiduciary and escrow agent, (3) that Respondent acted in bad faith when he attempted on August 21, 1989 to negotiate with the attorney for the party who owned the property in issue, to purchase the property directly from the attorney's client in an attempt to interfere with the Nuzzo contract and with the stated motive of getting a nice fee for himself. (testimony of William Stockman, Esq., Exhibit 17), (4) that Respondent acted in bad faith and falsely represented on August 28, 1985, to Jackie Jernigan, a secretary of George Patterson, Esq., that he had already returned the $22,500 deposit monies to his client, when in fact such monies were not returned until September 9, 1985 (T. 53-57 and Exhibits 6,7,15). The Referee found that the Respondent engaged

in conduct involving dishonesty, fraud, deceit or misrepresentation and violated the specific purpose doctrine (RR, Page 3).

In The Florida Bar V. McClosky, 130 So.2d 596 (Fla. 1961), the Respondent was suspended for six (6) months for improperly disbursing funds entrusted to him as escrow agent even though the court found the attorney did not financially gain from the disbursement, but he had willfully and wrongfully disbursed as in the present case.

The aggravating factors present in this case certainly justify increasing the discipline to be imposed and impeach Respondent's credibility. See The Florida Bar V. Setien, 530 So.2d 298 (Fla. 1988) and The Florida Bar v. Stillman, 401 So.2d 1306 (Fla. 1981).

Respondent received a three (3) year suspension in The Florida Bar V. Golden, 544 So.2d 1003 (Fla. 1989), regarding insurance fraud. The present misconduct constitutes cumulative misconduct and evidences a pattern of misconduct. This Court has held that cumulative misconduct warrants harsher discipline. See The Florida Bar V. Bartlett, 509 So.2d 287 (Fla. 1987) and The Florida Bar v. Hunt, 441 So.2d 618 (Fla. 1983).

The Florida Bar has promulgated standards for imposing lawyers sanctions. Standard 9.22 lists aggravating factors that may justify an increase in the degree of discipline to be imposed. The following aggravating factors were found by the Referee to be present in this case.

(a) prior disciplinary offenses;
(b) dishonest or selfish motive;

(c) a pattern of misconduct;
(d) refusal to acknowledge wrongful nature of conduct ("R", Page 3).

Further, Standard 7.1 is applicable and provides as follows:

> Disbarment is appropriate when a lawyer intentionally engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

Respondent's actions clearly demonstrated that he was attempting to have his client pay less than he had bargained for in the contract and Respondent advised Mr Stockman that he could get a nice fee out of this. (Ex. 17).

The Respondent has previously engaged in serious misconduct, insurance fraud. Cumulative misconduct is dealt with more severely than isolated misconduct. Respondent's present misconduct and his prior criminal insurance fraud demonstrate a pattern of fraud and deceit.

The Respondent in this cause not only improperly disbursed escrow funds he was holding to his client in violation of a fiduciary duty, but did so with the wrongful motive of having his client purchase the property from another party at a lower cost. (Ex. 17). Respondent fabricated the August 9, 1989 letter (Exhibit 9) in bad faith. Additionally, Respondent falsely advised Jackie Jernigan on August 28, 1985 that he had already disbursed the escrow funds, that it was too late, when in fact said funds were not disbursed until September 9, 1985. (Exhibits 6, 7, 15 and testimony of Jackie Jernigan).

Based upon Respondent's serious violations, his cumulative

misconduct and the aggravating factors present in this matter, including a dishonest or selfish motive, the appropriate discipline in this cause is disbarment for a period of five (5) years.

CONCLUSION

For the foregoing reasons, The Florida Bar respectfully requests this Honorable Court to uphold the Referee's findings of fact and recommendation as to guilt, to impose disbarment for a period of five (5) years as discipline, and tax the costs of these proceedings against Respondent in the amount of $1,327.95.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of The Florida Bar's Initial Brief was sent to Sid J. White, Clerk of The Supreme Court, Supreme Court Building, Tallahassee, Florida **32301-8167;** and a copy was mailed to LAURENCE GOLDEN, P. O. Box **290702,** Ft. Lauderdale, Florida **33329;** and a copy was mailed to JOHN T. BERRY, Staff Counsel, The Florida Bar, Tallahassee, Florida **32399-2300** this 3Rd **day of** November, **1989.**

Jacquelyn P. Needelman

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