

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

FILED

AUG 28 1989

CLERK, SUPREME COURT
By _____

Deputy Clerk

Supreme, Court Case No. 73,754

THE FLORIDA BAR:

In re: Petition for
Reinstatement of
HERMAN COHEN

_____/

REPORT OF REFEREE

This matter came on to be heard before the undersigned as a duly appointed referee, on the Petition for Reinstatement of Herman Cohen, in accordance with Rule 3-7.9, Rules of Discipline. The Final Hearing was held on July 19, 1989 in chambers at Ft. Lauderdale, Florida. The venue in this case was waived. Transcript, Pg. 4.

The undersigned Referee, after having heard the testimony of witnesses, examining the exhibits, hearing arguments of counsel and being otherwise fully advised, makes the following report.

I. SUMMARY OF PROCEEDINGS:

The following attorneys appeared as counsel for the parties:

For The Florida Bar: Paul A. Gross of Miami

For the Respondent: Richard Baron of Miami

11. FINDINGS OF FACTS:

A. The burden is on the Petitioner to establish that he is entitled to resume the privilege of practicing law without restrictions. In re: Dawson, 131 So.2d 472, 474 (Fla. 1961).

This referee finds that the Petitioner has failed to

meet this burden.

B. The Dawson case, supra, and In re: Petition of Wolf, 257 So.2d 547, 549, (Fla. 1972), the Supreme Court indicates certain basic elements which should be covered in the showing to be made by the Petitioner. The first element is, "strict compliance with the specific conditions of the disciplinary order."

C. In this case, the evidence shows that Mr. Cohen was not in compliance with court order which suspended him from practicing law in Florida. The Florida Bar v. Cohen, 534 So.2d 393 (Fla. 1988).

D. While Mr. Cohen was under suspension, he attended a deposition and negotiated with attorney, Judith K. Lamet, concerning the settlement of a pending case. At the time, Ms. Lamet was under the impression that Mr. Cohen was a member of The Florida Bar in good standing. (Transcript, pages 102-137). In addition, in violation of Rule 3-5.1(h), Rules of Discipline, the Petitioner failed to notify his clients that he had been suspended. (Transcript, Pg. 86). Also, the Petitioner did not remove his name, "Herman Cohen, Attorney at Law" from his building, while he was under suspension. (Transcript, pg. 96; pg. 151, lines 24 and 25, and pg. 152, lines 1-18).

E. It is the opinion of this referee that while the Petitioner was sorry he had been suspended, he showed no genuine sense of remorse or contrition, concerning his past misconduct and his failure to strictly comply with this Court's order which suspended him from practicing law.

F. "The Referee may properly consider the prior disciplinary record of one seeking to be reinstated to The Florida Bar, including the number, similarity and gravity of his offenses." Petition of Wolf, 257 So.2d 547, 548 (Fla. 1972)

G. While this referee was primarily concerned with the Petitioner's misconduct since he was suspended and with his lack of contrition about his misconduct, a few comments concerning Mr. Cohen's prior conduct and disciplinary record should be brought to the attention of this Court, to wit:

1. The Florida Bar, In re Herman Cohen 331 So.2d 306 (Fla. 1976). Public Reprimand for conflicts of interests and neglect of a legal matter.

2. The Florida Bar v. Cohen, 534 So.2d 392 (Fla. 1988). This is the case which resulted in Mr. Cohen being suspended and said case refers to Cohen v. New Sunrise Investment Corp. No. 76-16246 (Fla. 11th Cir. Ct., Apr. 9, 1986) and states: "the Eleventh Judicial Circuit held that Cohen had transferred real property fraudulently and ordered the conveyances to be set aside."

3. Private Reprimand-March 30, 1983. Florida Bar File No. 83-339(11H) See Report of Referee (Composite Ex. 2 and Transcript, Pg. 86).

4. Garcia v. Munne and Cohen, Case No. 78,7743 (Fla. 11th Cir. Ct. March 25, 1984). Paragraphs 4 and 5 of FINDINGS OF FACTS and ORDER ON FINAL HEARING. Composite Exhibit 1, wherein Herman Cohen was found to have knowingly, intentionally, falsely and fraudulently, made certain statements.

5. During 1977, a circuit judge found Herman Cohen in contempt of court, and referred to his lack of candor. Exhibit 5.

H. Petitioner's character witnesses spoke well of him, but their testimony can not override the evidence, which shows a disregard by the petitioner of this Court's suspension order, i.e. attending a deposition, negotiating a settlement, failure to remove his name from the building and failure to notify his clients that he was suspended.

I. Despite the testimony of the petitioner and his character witnesses, this referee's impressions were that he has not demonstrated a sense of repentance for his misconduct that led to his suspension. His violations after he was suspended, leads this referee to believe that the petitioner does not have the proper attitude and has not yet been rehabilitated.

III. CONCLUSIONS AND RECOMMENDATIONS

This referee recommends that Herman Cohen's Petition for Reinstatement be denied.

IV. RECOMMENDATION AS TO THE MANNER IN WHICH COSTS SHOULD BE TAXED.

This referee finds that the following costs were reasonably incurred by The Florida Bar and should be taxed to the petitioner, Herman Cohen, with Petitioner to receive credit for the \$500 deposit to The Florida Bar.

Court Reporter Costs for Hearing on July 19, 1989	\$ 646.00
Costs for The Florida Bar Staff Investigator.....	\$ 553.00

Advertisement of Petition for
Reinstatement in Miami Review,.....\$ 155.00

Bar Counsel Travel Expenses,.....\$ 37.00

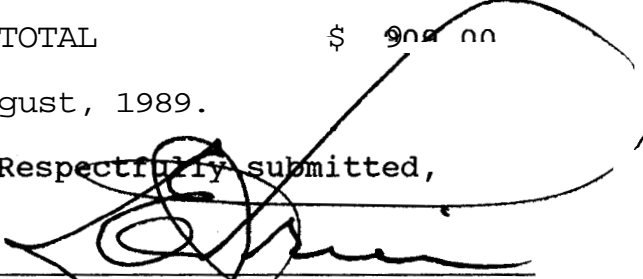
COSTS INCURRED BY THE FLORIDA BAR....\$ 1409.00

Less Deposit paid by Petitioner.....\$ 500.00

TOTAL \$ 906.00

Dated this 23 day of August, 1989.

Respectfully submitted,



JOSEPH E. PRICE, REFEREE
Broward County Courthouse
201 S.E. 6th Street
Ft. Lauderdale, Florida 33301
(305) 357-7700

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23 day of August, 1989, I
mailed conformed copies of the foregoing Report of Referee to **the**
following attorneys:

Paul A. Gross, Bar Counsel
The Florida Bar
211 Rivergate Plaza
444 Brickell Avenue
Miami, Florida 33131

Richard Baron, Counsel for Respondent
11077 Biscayne Blvd.
Ste. 307
Miami, Florida 33161

John A. Boggs, Director of Lawyer Regulation
The Florida Bar
Tallahassee, Florida 32399-2300



JOSEPH E. PRICE, REFEREE