

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

v.
NEIL A. SHANZER,

Respondent.

Supreme Court Case
No. 74,765

The Florida Bar File
Nos. 89-70,544(11F) and
89-70,702(11F)

FILED
JAN 23 1990
CLERK OF THE SUPREME COURT
TALLAHASSEE, FLORIDA

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein a hearing was held on January 22, 1990. The Pleadings, Notices, Motions, Orders, Transcripts and Exhibits all of which are forwarded to The Supreme Court of Florida with this report, constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: Jacquelyn P. Needelman

For The Respondent: Neil A. Shanzer, Respondent

II. Findings of Fact as to Each Item of Misconduct of which the Respondent is charged: After considering all the pleadings and evidence before me, pertinent portions of which are commented upon below, I find:

1. Respondent, NEIL A. SHANZER, is, and at all times hereinafter mentioned was, a member of The Florida Bar, subject

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to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

2. Respondent, in his unconditional Guilty Plea admitted that the facts contained in The Florida Bar's complaint were timely and accurate.

3. Based upon Respondent's Unconditional Guilty Plea, I find the Respondent guilty of counts 1 through 7 of The Florida Bar's complaint in this cause, attached hereto as Exhibit A.

4. Regarding Count I of The Florida Bar's complaint, the Respondent failed to maintain the trust accounting records required to be maintained.

5. Regarding Count II of The Florida Bar's complaint, the Respondent improperly retained for himself interest earned on client funds.

6. Regarding Count III of The Florida Bar's complaint, Respondent misappropriated approximately \$5,000 of the funds of his client Elizabeth Mintz. Restitution has been made in this matter.

7. Regarding Count IV of The Florida Bar's complaint, Respondent misappropriated \$5,000 regarding funds he received in a real estate transaction. Said funds have been repaid.

8. Regarding Count V of The Florida Bar's complaint, Respondent misappropriated approximately \$27,919.21 of his client, Helen Merwine's funds. Respondent still owes \$3,893.76 to G. Hartley Melish for his expert witness fees. The other misappropriated funds have been repaid.

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9. As to Count VI of The Florida Bar's complaint, Respondent's trust liabilities exceeded his trust account assets by \$27,768.97 and thereby a shortage of \$27,768.97 existed.

10. As to Count VII of The Florida Bar's complaint, Respondent misappropriated \$1950.00 of his client, Tara Bratter's funds. Restitution has been made to Ms. Bratter.

11. Respondent has not made full restitution in this cause as \$3,893.76 is still owed to Mr. Melish. I find that a portion of the restitution made in this cause was only made after a complaint was filed with The Florida Bar.

III. RECOMMENDATIONS AS TO WHETHER OR NOT THE RESPONDENT SHOULD BE FOUND GUILTY: As to each count of the complaint I make the following recommendations as to guilt or innocence:

AS TO COUNTS I THROUGH VII

I recommend that the respondent be found guilty and specifically that he be found guilty of violating the following:

AS TO COUNT I

Disciplinary Rules 9-102(A) and 9-102(B)(3) of the Code of Professional Responsibility, article XI, Rule 11.02(4) of the Integration Rule of The Florida Bar, and Rules 5-1.2(b) and (c) of the Rules Regulating Trust Accounts.

AS TO COUNT II

Rules 5-1.1(d)(3)(a), (b) & (c) of the Rules Regulating Trust Accounts.

AS TO COUNT III

Rule 4-8.4(c) of the Rules of Professional Conduct and Rule 5-1.1 of the Rules Regulating Trust Accounts.

AS TO COUNT IV

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Rule 5-1.1, Rules Regulating Trust Accounts and Rule 4-8.4(c) of the Rules of Professional Conduct.

AS TO COUNT V

Rule 4-8.4(c) of the Rules of Professional Conduct and Rule 5-1.1 of the Rules Regulating Trust Accounts.

AS TO COUNT VI

Rule 5-1.1 of the Rules Regulating Trust Accounts.

AS TO COUNT VII

Rule 4-8.4(c) of the Rules of Professional Conduct and Rule 5-1.1 of the Rules Regulating Trust Accounts.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

I recommend that the respondent be disbarred from the practice of law in Florida for a period of Five (5) years. I find that the following aggravating factors are present: (1) dishonest or selfish motive; (2) a pattern of misconduct; (3) multiple offenses.

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD:

Age: 42

Date Admitted to The Florida Bar: 10/18/73

Prior Discipline: None

VI. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED.

I find the following costs were reasonably incurred by The Florida Bar:

Administrative Costs	\$ 500.00
Court Reporter (Hearing 1/22/90)	\$ 184.25
Staff Auditor Costs	\$ 784.00

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(32 Hours @\$24.50/hr)

Total \$ 1,468.25

Dated this 20th day of March, 1990.



W. HERBERT MORIARTY, REFEREE

Copies to:

Jacquelyn P. Needelman, Bar Counsel
Neil A. Shanzer, Respondent
John T. Berry, Staff Counsel