

FILED

SID J. WHITE

FEB. 13 1991

CLERK, SUPREME COURT

By _____
Deputy Clerk

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

SUPREME COURT CASE NO. 75,116

TFB NO. 89-30,753 (18A)

vs.

WALTER J. BELLEVILLE,

Respondent.

REFEREE'S REPORT

MAY IT PLEASE THE COURT:

Pursuant to Rule 3-7.5(k) of the Rules of Discipline, the following Findings of Fact and Recommendation are reported:

FINDINGS OF FACT:

1. Respondent, Mr. Walter J. Belleville, is a member of the Florida Bar, subject to the jurisdiction of the Supreme Court of Florida and the Rules Regulating the Florida Bar.
2. In or around July of 1988, Mr. Bradley M. Bloch spoke to Mr. James F. Cowan about an apartment building located in Seminole County, Florida, that Mr. Cowan had for sale. A "For Sale by Owner" sign was posted on the property in question.
3. On or about July 19, 1988, Mr. Bloch, as president of Galloway and Bloch, Inc., entered into a contract for sale and purchase with Mr. Cowan; the contract provided that Mr. Bloch would purchase the property for a total of \$125,000.
4. Mr. Bloch executed an unsecured promissory note in the principal amount of \$100,000 at 10% interest amortized over an approximate 25 year period.
5. An addendum to the contract signed by Mr. Cowan and Mr. Bloch on or about July 19, 1988 provided that the note would become void and unenforceable upon Mr. Cowan's death. The note also granted the buyer deferred payment for a period of four months with no mention of interest accrued during that time.
6. Mr. Bloch and Mr. Cowan had agreed, at Mr. Bloch's suggestion, that Mr. Bloch's attorney would prepare the closing documents, including the promissory note.

7. Shortly after obtaining a signed contract and addendum, Mr. Bloch retained Respondent to handle the closing.

8. Mr. Bloch discussed the terms of the contract, the addendum and the promissory note with Respondent.

9. Mr. Bloch provided the legal descriptions of the property to Respondent; the apartment property and Mr. Cowan's residence were included in the description: Mr. Cowan had no intention to sell his home as part of this transaction, and had no idea that it was included.

10. Mr. Bloch provided Respondent with information for a second addendum to the contract. The second addendum provided, inter alia, that Mr. Cowan would pay all closing costs.

11. Respondent's office prepared all the closing documents and the second addendum to the contract.

12. The closing occurred on July 25, 1988 at Mr. Cowan's residence.

13. Respondent did not attend the closing; his paralegal, Lauren Hooper, did attend to act as a notary.

14. No explanation of the documents was made to Mr. Cowan by any representative of Respondent's Office, and he did not receive copies of the closing documents until ten to twelve days after the closing.

15. The closing statement prepared by Respondent listed on the seller's side of the statement a \$625 fee, described as "Attorney Fee (Closing Agent)."

16. Respondent was paid a fee of \$625, which was deducted from Mr. Cowan's sale proceeds pursuant to the agreement between Mr. Bloch and Mr. Cowan that Mr. Cowan would pay all closing costs.

17. At the time he entered into the contract, Mr. Cowan was 83 years old; and had a third-grade education.

18. Mr. Cowan had sold at least 25 properties in his lifetime.

19. Mr. Cowan did not have any contact with the Respondent, Mr. Belleville, prior to or during any of the transactions in question.

20. Mr. Cowan did not have a lawyer representing him during this transaction.

21. The Local Grievance Committee found probable cause for a violation of Rule 4-1.7(a) and Rule 4-1.7(b) of the Rules

of Professional Conduct, based on the case of The Florida Bar v. Teitelman, 261 So.2d 140 (Fla. 1972). The Committee found no probable cause for violations of Rules 4-5.3(a), (b) and (c).

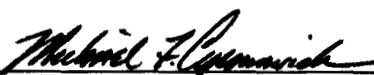
RECOMMENDATION:

It is recommended that the Respondent, Walter J. Belleville, be found Not Guilty of misconduct justifying disciplinary measures under the rules cited. The decision of The Florida Bar v. Teitelman, 261 So.2d 140 (Fla. 1972) is inapplicable to the facts of this case, as Mr. Cowan paid Mr. Belleville's fee pursuant to the terms of the contract which specified that Mr. Cowan would pay all closing costs. Teitelman does not stand for the proposition that if an attorney's fees are included in the closing costs of a contract pursuant to an agreement between the contracting parties, the attorney may be deemed to represent the party who agrees to pay the closing costs. This is in keeping with Advisory Opinions 64-56 (Sept. 29, 1964) and 65-34 (June 15, 1965).

I am quite satisfied that Mr. Cowan may very well have been taken advantage of in the present circumstances. Nevertheless, there was no evidence that the Respondent had any contact or dealing with him whatsoever, much less any duty or obligation to him as an attorney. Based on this determination, no disciplinary measures are recommended. It is further recommended that costs be borne by the Complainant.

Dated at Orlando, Florida this 8th day of February, 1991.

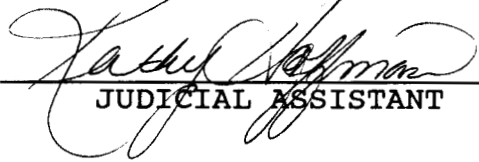
Respectfully submitted,


MICHAEL F. CYCMANICK
Referee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have served the original of the foregoing Referee's Report to the Clerk of the Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32399-1927; a copy of the foregoing Referee's Report by certified mail, return receipt requested, no. p 780 717 260, on Staff Counsel, John T. Berry, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300; a copy of the foregoing, by certified mail,

return receipt requested, no p 780 717 261, on Bar Counsel, Jan Wichrowski, The Florida Bar, 880 North Orange Avenue, Suite 200, Orlando, Florida 32801-1085; a copy of the foregoing, by certified mail, return receipt requested, no. p 780 717 262, on respondent's counsel, Dennis F. Fountain, 1250 South U.S. Highway 17-92, Suite 250, Longwood, Florida, 32759; a copy of the foregoing by certified mail, return receipt requested, no. p 780 717 263, on respondent, Walter J. Belleville, 237 N. Westmonte Drive, Altamonte Springs, Florida, 32701; and a copy by ordinary mail to Bar Counsel, The Florida Bar, 880 North Orange Avenue, Suite 200, Orlando, Florida, 32801-1085, this 8th day of February, 1991.



JUDICIAL ASSISTANT