IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant

v.

GRANVILLE H. CRABTREE

Respondent.

_____/

Case No. 75,119

TFB No. 88-10,904(12C)

SID J. WHITE
DEC 6 1990
CLERK, SUPREME COURT
By _____ Deputy Clerk

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rule 3-7.6, Rules of Discipline, a final hearing was held on November 1, November 2 and November 9, 1990. The enclosed pleadings, orders, transcripts and exhibits are forwarded to The Supreme Court of Florida with this report, and constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: DAVID R. RISTOFF

For The Respondent: RICHARD T. EARLE, JR.

II. Findings of Fact as to Each Item of Misconduct With Which the Respondent is Charged: After considering all the pleadings, testimony and evidence before me, I find that Mrs. VanAntwerp was a client of respondent at all times material herein, and that they shared a close relationship.

Prior to 1980, Mrs. VanAntwerp hired the respondent to repatriate funds into the United States from Europe without making public the location of those funds.

Mr. Prine was a client of respondent individually and of respondent's law firm at all times material herein.

Prior to 1980, respondent and Mr. Prine were involved in real estate developments. Mr. Prine was responsible for the development aspects. Respondent was responsible for the legal work and obtaining financing.

On October 3, 1980, Mr. Prine, as trustee, entered into a purchase agreement with Mr. Massey, as seller, for the sale of the Orange Grove Property. Respondent's law firm was the escrow

agent for the sale. The purchase price for the property was 1.3 Million Dollars ($1,300,000.00). The down payment was agreed at $377,000.00, and a mortgage of $923,000.00 was due to Mr. Massey on January 26, 1981. The sale of the Orange Grove Property was completed on December 1, 1980. A loan for $400,000.00 was obtained by Mrs. VanAntwerp for the down payment. A Mortgage and Note for $986,659.50 to Mr. Massey was signed by respondent, as trustee, with no personal liability on the Note.

Respondent received $4,000.00 in legal fees from the aforementioned sale. Respondent also received one-half (1/2) of the real estate commissions to Suncoast Development, with respondent's share of the commission being $20,983.32. Neither Mr. Prine nor Mrs. VanAntwerp were aware of the other's part in this venture.

Thereafter, respondent used Jerry Reed to act as trustee on behalf of Mrs. VanAntwerp to bring 1.1 million dollars into the United States. Subsequently, an additional $400,000.00 was brought into the United States.

On January 29, 1981, the respondent, as trustee, entered into a joint venture agreement with Jerry Reed, as trustee for a group of "investors" (Mrs. VanAntwerp). Mr. Reed's "investors" (Mrs. VanAntwerp) agreed to invest 1.5 million dollars into the project in return for fifty (50%) percent of the future profits. The respondent's principals (respondent, Mr. Prine, and Mrs. VanAntwerp) would share in the remaining fifty (50%) percent of the profits.

Thereafter, a series of letters written to Mr. Prine referred to "European investors", but never disclosed to Mr. Prine that Mrs. VanAntwerp was the "European investor". Further, Mrs. VanAntwerp was not aware that Mr. Reed was acting as her trustee, having left it up to respondent to determine the method by which her funds would be brought to the United States.

The 1.5 million dollars brought into the United States was used to satisfy the mortgage to Mr. Massey, as well as the $400,000.00 loan obtained by Mrs. VanAntwerp. Respondent's law firm received $32,373.91 in legal fees for this transaction.

On April 1, 1981, respondent drafted a letter for Mr. Reed's signature, addressed to respondent, stating that the "European investor" wanted the return of their money and out of the venture. Mrs. VanAntwerp had made no such demand for her money.

On April 3, 1981, respondent drafted a letter ostensibly to Mr. Reed advising that his co-venturers (Mr. Prine, Mrs. VanAntwerp, and respondent) were willing to guarantee the return of the 1.5 million dollars from any sale of lots or any future sale of the property, if the "European investors" would relinqish any rights to the profits attributable to the development of the property. There were no time limitations imposed for the return of the money.

A copy of the April 1, 1981, letter (drafted by respondent), as well as respondent's letter dated April 3, 1981 to Mr. Reed were delivered to Mr. Prine on April 3, 1981.

In the April 3, 1981 letter to Mr. Prine, respondent stated

that the April 1, 1981 letter from Mr. Reed indicating that the "European investors" wanted out of the investment came as a "surprise" to him. Respondent advised Mr. Prine that the counter proposal was a good deal in that they would not be required to pay interest nor to share in the profits with the "European investors".

On April 17, 1981, respondent drafted a letter for Mr. Reed's signature, addressed to respondent, accepting the proposed counter offer on behalf of the "European investors".

On April 20, 1981, respondent wrote a letter to Mr. Prine advising him that the "European investors" had accepted the counter proposal and thereby terminated the joint venture. Neither Mr. Prine nor Mrs. VanAntwerp were aware of the others involvement. Further, Mr. Prine was not aware that Mrs. VanAntwerp was the "European investor."

In early 1982, respondent approached Neil Saunders, a client and business partner, about Mr. Saunders purchasing the Orange Grove development. Mr. Prine did not want to get out of the Orange Grove development, but agreed to do so as to accommodate the respondent in getting the "European investors" out. Mr. Prine specifically asked the respondent whether or not he would have any future involvement in the project. Respondent assured Mr. Prine that he would have no involvement except to possibly provide legal services. With these assurances Mr. Prine agreed to the sale to Mr. Saunders.

On April 29, 1982, the sale of the property to Mr. Saunders was completed. The purchase price for the property was 1.8 million dollars. Mr. Saunders, as trustee, executed a Mortgage and Note in the amount of $850,000.00 to Horizon Mortgage Corporation. Mr. Saunders, as trustee, executed a Mortgage and Note to respondent as trustee, in the amount of $950,000.00. The Note for $950,000.00 called for quarterly interest payments, and the principal balance due in four (4) years on May 4, 1986.

From the sale of the property to Mr. Saunders, respondent received $25,000.00, being one-half (1/2) of the commission shared with Mr. Saunder's real estate company. Respondent's law firm was paid $34,000.00 in legal fees. Respondent, Mrs. VanAntwerp, and Mr. Prine each received $66,666.67. In addition, $241,559.64 was disbursed to Julias' Baer Securities on behalf of Mrs. VanAntwerp. Bonds were obtained from those funds were delivered to Mrs. VanAntwerp's account at Northern Trust Bank. Also, $361,000.00 was disbursed to respondent as trustee, presumably on behalf of Mrs. VanAntwerp.

On May 4, 1983, Mr. Saunders, as trustee, conveyed the Orange Grove Property to The Winthrope Group, Inc., of which the respondent was President and a major stockholder along with respondent's law partner, Mr. Sanchez.

On May 5, 1983, the Winthrope Group Inc. obtained a 4.3 million dollar loan from the State Savings and Loan Association of Lubbock, Texas for the construction and development of the Orange Grove Property. Respondent, Mr. Sanchez, and Mr. Saunders each personally guaranteed this loan. Portions of the Lubbock

loan were used to satisfy the loan obtained by Mr. Saunders from Horizon Mortgage, and to satisfy the $950,000.00 mortgage held by respondent as trustee (for Mrs. VanAntwerp).

Subsequently, Mrs. VanAntwerp invested an additional $600,000.00 with the Winthrope Group, Inc., which $600,000.00 has not been repaid to date. The initial 1.5 million dollars has been repaid to Mrs. VanAntwerp.

III. Recommendation as to Whether or Not the Respondent Should Be Found Guilty: I recommend that the Respondent be found guilty of violating the following rules of the Code of Professional Responsibility (in effect prior to January 1, 1987); I find the respondent violated DR 1-102 (a)(1) (a lawyer shall not violate a disciplinary rule); I find that respondent violated DR 1-102 (a)(4) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation). I find that the series of letters written to Mr. Prine was an intentional misrepresentation. Also, respondent's dealings herein were fraudulent, dishonest, deceitful, and constitute misrepresentation. Respondent misled Mr. Prine regarding the European investor, and specifically misrepresented that the European investor wanted its money back in the sale to Mr. Saunders, and then again by stating that he was not going to be involved in the Orange Grove project as a principal.

Further, I find that respondent was dishonest with Mrs. VanAntwerp in his represention of her in the repatriation of her funds in that he used her funds in obtaining the Orange Grove Property for his own purposes.

I also find that the aforementioned misrepresentations to Mr. Prine were done to freeze Mr. Prine out of the Orange Grove Property. These acts were intentional on the part of the respondent. Even though there was little or no actual damage to Mr. Prine, there was a potential for great injury in that Mrs. VanAntwerp had the risk of losing her money, and Mr. Prine potentially lost the opportunity to make further profit on the Orange Grove Property.

I find that respondent's conduct herein also violated DR 1-102(A)(6) (a lawyer shall not engage in any other conduct that adversely reflects on his fitness to practice law); I find that the respondent violated DR 5-104(A) (a lawyer shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise his professional judgment therein for the protection of the client, unless the client has consented after full disclosure). Respondent never fully disclosed to Mr. Prine that he was using the Orange Grove Property to repatriate funds and likewise did not fully disclose to Mrs. VanAntwerp that he was investing in the Orange Grove for his own personal gain.

I find that the respondent violated DR 5 -105(B) (a lawyer shall not continue multiple employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by his representation of

another client). Respondent had a conflict in that his objective with Mr. Prine was to make a profit and his objective with Mrs. VanAntwerp was purely to get her money into the United States.

I find the respondent has violated DR 7-101(A)(1) (a lawyer shall not fail to seek the lawful objectives of his client through reasonably available means permitted by law and the disciplinary rules). Respondent did not diligently seek to repatriate and return funds to Mrs. VanAntwerp in that he tied up Mrs. VanAntwerp's funds for four (4) years with the Mortgage and Note to Mr. Saunders.

I find the Respondent did not violate DR 7-101(A)(2) (a lawyer shall not fail to seek to carry out a contract for employment entered into with a client for professional services).

I find the respondent violated DR 7-101(A)(3) (a lawyer shall not prejudice or damage his client during the course of the professional relationship). Respondent caused Mrs. VanAntwerp to lose over $600,000.00. Further his actions prejudiced or damaged Mr. Prine.

IV. Recommendation as to Disciplinary Measures to be Applied: I recommend that the Respondent be disbarred from the practice of law in the State of Florida and assessed the costs of these disciplinary proceeds as outlined in the Statements of Costs.

V. Personal History and Past Disciplinary Record: After a finding of guilt and prior to recommending discipline to be imposed pursuant to Rule 3-7.5(k)(1), Rules of Discipline, I considered the following personal history and prior disciplinary record of the Respondent, to wit:

(1) Age: 61 years old

(2) Date Admitted to Bar: June 3, 1960

(3) Prior Disciplinary Record: The Respondent has a prior private reprimand.

(4) Mitigating Factors: None

(5) Aggravating Factors: Prior disciplinary offense (Supreme Court Case No. 74,740 - Private Reprimand - conduct similar in nature to the conduct herein). Also the vulnerability of Mrs. VanAntwerp because of her age and implicit trust in respondent.

VI. Statement of Costs and Manner in Which Costs Should Be Taxed: I find that the costs contained in The Florida Bar's Cost Summary were reasonably incurred by The Florida Bar.
It is apparent that other costs might be incurred in the future, if further proceedings are necessary in this matter. It is recommended that such future costs, together with the foregoing costs, be charged to the Respondent and that interest at the

statutory rate shall accrue and be payable beginning thirty (30) days after the judgment in this case becomes final unless a waiver is granted by the Board of Governors of The Florida Bar.

Dated this 29th day of November, 1990.

Thomas E. Stringer Sr.

The Honorable Thomas E. Stringer
Referee

Copies furnished to:
Richard T. Earle, Jr., Counsel for the Respondent
David R. Ristoff, Assistant Staff Counsel
John T. Berry, Staff Counsel