

FILED

SID. J. WHITE

OCT 2 1990

CLERK, SUPREME COURT

By

Deputy Clerk

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

Case No. 75,670
TFB No. 88-11,003(12C)

v.

SYDNEY ADLER,
Respondent.

REPORT OF REFEREE

I. Summary of Proceedings:

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the Rules of Discipline, a hearing was held on September 14, 1990.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: Susan Bloemendaal

For the Respondent: Warren Goodrich.

II. Findings of Fact:

After considering all the pleadings and evidence before me, pertinent portions of which are commented upon below, I find:

As to Paragraph 16a of the Complaint:

The Complaint charged and the Respondent conceded that funds belonging to the Respondent and/or his business entities were commingled in his trust account.

The testimony of Mr. Pedro J. Pizzaro (Pages 12-29), Exhibits 1A, 1B, 2 and 3, all show the commingling. In addition, Respondent conceded the allegation (Page 100, Lines 9-15).

As to Paragraph 16b of the Complaint:

The Complaint charged and the Respondent conceded that the Respondent utilized client trust funds for purposes other than the specific purpose for which the funds were entrusted to him.

The testimony of Mr. Pedro J. Pizzaro (Pages 12-29), Exhibits 1A and 3, show that the funds of client Anuszkiewicz were used for purposes other than those intended. In addition, Respondent conceded the allegation (Page 100, Lines 16-21).

As to Paragraphs 16c, d, e and f of the Complaint:

The Complaint charged that, for the period from March 1983 through January 1984, the Respondent failed to preserve and/or produce bank statements, original cancelled checks, client ledger cards, and monthly reconciliations/comparisons/annual listings for account #00134872 at the Ellis Sarasota Bank.

The testimony of Mr. Pedro J. Pizzaro (Page 27, Line 23, through Page 28, Line 14) was that none of the records required were produced for the period in question. Respondent argues that the Bar made no showing that there were funds in the account at that time thus obviating the requirement for any such

records. Exhibit 1B, however, shows deposits and disbursements during the period in question (See Exhibit 1B, Page 2, the last 3 entries and the top of Page 3, the top 9 entries.

As to Paragraph 16g of the Complaint:

The Complaint alleged that the Respondent failed to produce for inspection evidence that he had authorized the banks in which he maintained trust accounts to notify The Florida Bar in the event a check was returned for insufficient funds.

Mr. Pedro J. Pizzaro testified to the absence of such authorizations (Page 28, Lines 14-19). The allegation was conceded by the Respondent reserving an opportunity to show that such a requirement did not exist during the time periods in question. The Bar has notified me and Respondent of the requirement which did exist at that time. The allegation has been conceded.

III. Recommendations as to Findings of Guilty:

As to Paragraph 16a:

I recommend that the Respondent be found guilty of a violation of DR 9-102(A), Code of Professional Responsibility for commingling his funds or funds belonging to his business entities with trust funds.

As to Paragraph 16b:

I recommend that the Respondent be found guilty of a violation of Rule 11.02(4), Florida Bar Integration Rules, in that he used client trust funds for purposes

other than the specific purpose for which the funds were entrusted to him.

As to Paragraph 16c:

I recommend that the Respondent be found guilty of a violation of Section 11.02(4)(c)2g, Bylaws to The Florida Bar Integration Rules, for failing to maintain, preserve and/or produce bank statements for a trust account existing between March 1983 through January 1984.

As to Paragraph 16d:

I recommend that the Respondent be found guilty of a violation of Section 11.02(4)(c)2c, Bylaws to The Florida Bar Integration Rules, for failing to maintain, preserve and/or produce original cancelled trust checks for a trust account existing between March 1983 through January 1984.

As to Paragraph 16e:

I recommend that the Respondent be found guilty of a violation of Section 11.02(4)(c)2f, Bylaws to The Florida Bar Integration Rules, for failing to maintain, preserve and/or produce client ledger cards for a trust account existing between March 1983 through January 1984.

As to Paragraph 16f:

I recommend that the Respondent be found guilty of a violation of Section 11.02(4)(c)3a(i) and (ii), Bylaws to The Florida Bar Integration Rules, for

failing to maintain, preserve and/or produce for inspection monthly reconciliations and comparisons and annual listings for a trust account existing between March 1983 through January 1984.

As to Paragraph 16g:

I recommend that the Respondent be found guilty of a violation of Section 11.02(4)(c)3d, Bylaws to The Florida Bar Integration Rules, for failing to produce for inspection evidence that he had authorized the banks in which he maintained trust accounts to notify The Florida Bar in the event any trust check was returned due to insufficient funds.

IV. Recommendation as to Disciplinary Measures to be Applied:

I recommend suspension for a period of eighteen (18) months.

In making this recommendation, I have considered the general factors to be followed in imposing sanctions. I believe the actions in this case to be of the nature set out in Paragraph 4.12, Florida's Standards for Imposing Lawyer Sanctions. That paragraph provides that suspension is the appropriate punishment warranted.

I found the following mitigating factors to be present:

Absence of a dishonest or selfish motive.

Full and free disclosure to disciplinary board and cooperative attitude toward proceeding.

I found the following aggravating factors to be present:

Prior disciplinary action (I noted that the acts here occurred long before the acts which were the subject matter of the prior disciplinary action. Had the instant facts been known or prosecuted prior to that action, however, the punishment in that case would have undoubtedly been harsher).

Multiple offenses.

Substantial experience in the practice of law.

V. Personal History and Past Disciplinary Record:

After finding of guilt and prior to recommending discipline pursuant to Rule 3-7.5(k)(1)(4), I considered the following personal history and prior disciplinary record of the Respondent, to-wit:

Date admitted to Bar: Early 1950.

Prior disciplinary convictions and disciplinary measures imposed therein: April 23, 1987 - Conviction of a violation Disciplinary Rule 1-102(a)(4) and Florida Bar Integration Rule 11.02(3)(a). Suspended for ninety (90) days. Reported at 505 So.2d 1334 (Fla. 1987). Included at Exhibit 5.

VI. Statement of Costs:

Administrative costs at grievance committee level under Rule 3-7.5(k)(1)(5)	\$150.00
Administrative costs at referee level under Rule 3-7.5(k)(1)(5)	150.00
Court reporter costs	<u>571.70</u>
TOTAL ITEMIZED COSTS	\$871.70

It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses together with the foregoing itemized costs be charged to the Respondent.

Dated this 1st day of October, 1990.


HENRY J. ANDRINGA
Referee

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing Report of Referee was mailed on this 1st day of October, 1990, to:

BONNIE L. MAHON
Assistant Staff Counsel
Suite C-49
Tampa Airport, Marriott Hotel
Tampa, Florida 33607

WARREN M. GOODRICH
Post Office Box 241
Bradenton, Florida 34206
Attorney for Respondent

JOHN T. BERRY
Staff Counsel
The Florida Bar
650 Apalachee Parkway
Tallahassee, FL 32399-2300


HENRY J. ANDRINGA, Referee