

IN THE SUPREME COURT OF FLORIDA
BEFORE A REFEREE

THE FLORIDA BAR,

Complainant,

v.

L. VAN STILLMAN,

Respondent.

Supreme Court Case No. 76,466

The Florida Bar File No.
90-50,518 (15D)

FILED

SID J. V. H. P.

JUN 7 1991

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

The undersigned was appointed as referee to preside in this disciplinary action by order of this court dated July 18, 1990. The pleadings, transcripts and all other papers filed with the undersigned, which are forwarded to the court with this report, constitute the entire record in this case.

All issues were heard at a final hearing held at the offices of The Florida Bar at Ft. Lauderdale, FL on January 8, 1990. The bar was represented by David M. Barnovitz, Assistant Staff Counsel. Respondent was present and was represented by John A. Weiss, Esquire.

Subsequent to the final hearing, the bar received notice of certain allegations pertaining to the respondent which, by stipulation of the parties, were reduced to an agreed statement of facts. By virtue of such Stipulation the respondent has waived a finding of probable cause regarding such agreed statement of facts and has agreed to the incorporation of such statement of facts in the undersigned's findings of

fact recited below. The findings of fact pertaining to such stipulation and agreed statement appear at the end of my findings of fact and are labeled "Stipulated Findings of Fact Regarding Post Hearing Allegations."

11. FINDINGS OF FACT AS TO EACH ITEM OF MISCONDUCT OF WHICH THE RESPONDENT IS CHARGED:

AS TO THE BAR'S COUNT I

1. Respondent is, and at all times hereinafter mentioned, was a member of The Florida Bar, subject to the jurisdiction and disciplinary **rules** of the Supreme Court of Florida.

2. - Heretofore, in 1988, one Joel B. Tag ("**Tag**") entered into an agreement with Southeast Development of Palm Beaches, Inc. ("Southeast") wherein and whereby Southeast agreed to sell to Tag, who agreed to purchase the same, for an agreed upon price of \$75,000.00, a residence and lot situate at Lantana, FL.

3. The purchase and sale, aforesaid, was subject to and contingent upon Tag's securing a first mortgage loan from The Greater New York Mortgage Corporation of Florida ("lender") in the principal sum of \$56,250.00.

4. The lender agreed to advance the subject \$56,250.00 first mortgage loan and selected respondent who agreed to act as the closing agent in the transaction and, as an attorney agent for Attorneys' Title Insurance Fund, Inc., to issue a mortgagee title insurance policy in the principal amount of the lender's mortgage loan.

5. Upon selecting respondent **as** closing agent, the lender issued to respondent certain written closing instructions, which written instructions, recited, inter alia, as follows:

Secondary financing has been approved in the amount of \$ NONE. (See the ~~bar's~~ Exhibit 1 in evidence).

6. At the time Tag and Southeast entered into the agreement of purchase and sale, there was extant a certain mortgage lien affecting title to the subject premises held by one Lea Bruschi ("Bruschi") in the principal sum of \$33,000.00.

7. Respondent participated in securing an assignment of the Bruschi note and mortgage to Southeast, (See the bar's Exhibit 2 in evidence).

8. In preparation for the subject closing, respondent secured ~~Tag's~~ signature to a Fannie Mae Affidavit and Agreement Form 1009 verified June 13, 1988. The referenced affidavit and agreement recited, inter alia, **as** follows:

Representation No. **4**, There is no subordinate financing relating to the Property except **as** specifically set forth immediately below: **NONE** (See the bar's Exhibit 3 in evidence).

9. Having received written closing instructions specifying that there was no secondary financing approved (Exhibit 1) and having secured Tag's signature to the referenced affidavit and agreement (Exhibit 3) which expressly recited that there was no subordinate financing relating to the subject property, respondent nonetheless, without disclosure to or consent by the lender, prepared **and** secured ~~Tag's~~ signature to a purchase money second note and mortgage in the principal sum of \$33,000.00 in favor of Bruschi. (See the bar's Exhibit 4 in evidence).

10. Respondent thereafter closed title to the subject property on June 13, 1988 and completed a U.S. Department of Housing and **Urban** Development Settlement Statement purporting to set forth the particulars of the closing. (See the bar's Exhibit 5 in evidence).

11. Notwithstanding that the settlement statement he completed (Exhibit 5) specified at item 303 thereof that cash in the sum of \$23,804.92 was produced by Tag to pay the balance due and owing on account of the purchase price, borrower's costs and adjustments, no such cash was produced or collected at the closing.

12. Notwithstanding the settlement statement respondent completed (Exhibit 5) specified no existing loans taken subject to and no second mortgage loan at items 203 and 204, respectively, respondent knowingly prepared, had executed and recorded a second purchase money mortgage and note from Tag to Bruschi in the principal sum of \$33,000.00 which note and mortgage produced a disparity from the subject settlement statement in the sum of \$9,195.08.

13. On or about July 18, 1988 respondent issued a mortgagee title insurance policy #MP-1089174 to the lender in the principal amount of its mortgage, viz., \$56,250.00. (See the bar's Exhibit 6 in evidence).

14. The mortgagee title insurance policy (Exhibit 6) failed to disclose the existence of the second purchase money note and mortgage given by Tag to Bruschi despite the fact that respondent had prepared such mortgage and note, secured the execution thereof and caused the same to be recorded on or about August 2, 1988.

15. Thereafter respondent provided the lender with copies of the mortgage title policy (Exhibit 6) and loan settlement statement (Exhibit 5) but made no disclosure to the lender regarding the secondary financing and particulars thereof as hereinabove specified.

AS TO THE BAR'S COUNT II

16. Notwithstanding that respondent prepared and secured Tag's verified execution of the affidavit and agreement (Exhibit 3), respondent nonetheless actively participated with Tag in rendering

Tag's averments and representations concerning secondary financing to constitute a lie and deceit by preparing, causing to be executed and recording the second purchase money note and mortgage as hereinabove referenced.

AS TO THE BAR'S COUNT III

17. I find no violation by respondent in connection with Count III of the bar's complaint.

AS TO THE BAR'S COUNT IV

18. Heretofore, in 1988, one **Rory D. Kaiser** ("Kaiser") entered into an agreement with **L & M Management of the Palm Beaches, Inc.** ("L & M") wherein and whereby L & M agreed to sell to Kaiser who agreed to **purchase** the same, for an agreed upon price of \$170,000.00, a residence and lot situate at Plantation.

19. The purchase and sale, aforesaid, was subject to and contingent upon Kaiser's securing a first mortgage loan from **The Greater New York Mortgage Corporation of Florida** ("lender") in the principal sum of \$127,500.00.

20. The lender agreed to advance the subject \$127,500.00 first mortgage loan and selected respondent who agreed to act as the closing agent in the transaction and, as an attorney agent for **Attorneys' Title Insurance Fund, Inc.**, to issue a mortgagee title insurance policy in the principal amount of the lender's mortgage loan.

21. Upon selecting *respondent as closing agent*, the lender issued to respondent certain written closing instructions, which written instructions, recited, inter alia, as follows:

Secondary financing has been approved in the amount of \$ NONE. (See the bar's Exhibit 7 in evidence).

22. In preparation for the subject closing, respondent secured Kaiser's signature to a Fannie Mae Affidavit and Agreement Form #10009 which respondent verified, as notary public on August 8, 1988.

23. The referenced affidavit and agreement recited, inter alia, as follows :

Representation No. 4. There is no subordinate financing relating to the Property except as specifically set forth immediately below: NONE (See the bar's Exhibit 8 in evidence).

24. Having received written closing instructions specifying that there **was** no secondary financing approved (Exhibit 7) and having prepared and secured Kaiser's signature to the referenced affidavit and agreement (Exhibit 8) which expressly recited that there was no subordinate financing related to the subject property, respondent nonetheless, without a disclosure to or consent by the lender, prepared and secured Kaiser's signature to two (2) subordinate purchase money notes and mortgages, one in the principal sum of \$55,937.97 given by Kaiser to H. S. Sibia and **Dr.** Manjit Kaur Sibia and one in the principal sum of \$13,500.00 given by Kaiser to L & M. (See the **bar's** Exhibits 9 and 10 in evidence).

25. Respondent thereafter closed title to the subject property on August 8, 1988 and completed a U. S. Department of Housing and Urban Development Statement purporting to set forth the particulars of the closing. (See the bar's Exhibit 11 in evidence).

26. Notwithstanding that the settlement statement respondent completed (Exhibit 11) specified at item 303 thereof that cash in the

sum of \$50,314.22 was produced by Kaiser to pay the balance due and owing on account of the purchase price, borrower's costs and adjustments, no such cash was produced or collected at the closing.

27. Notwithstanding that the settlement statement respondent completed (Exhibit 11) specified no existing loans taken subject to and no second mortgage loan at items 203 and 204, respectively, respondent knowingly prepared, had executed and recorded a second purchase money mortgage and note from Kaiser to Sibia in the principal sum of \$55,937.97 and a third purchase money mortgage and note from Kaiser to L & M in the principal sum of \$13,500.00 which second and third purchase money notes and mortgages produced a disparity from the subject settlement statement in the sum of \$12,162.65.

28. On or about August 25, 1988 respondent issued a mortgagee title insurance policy #MP-1135214 to the lender in the principal amount of its mortgage, viz., \$127,500.00. (See the bar's Exhibit 2 in evidence).

29. The mortgagee title insurance policy (Exhibit 12) failed to disclose the existence of the second and third purchase money notes and mortgages given by Kaiser to Sibia and to L & M despite the fact that respondent had prepared such mortgages and notes, secured the execution thereof and caused the same to be recorded.

30. Thereafter respondent provided the lender with copies of the mortgage title policy (Exhibit 12) and loan settlement statement (Exhibit 11) but made no disclosure to the lender regarding the secondary financing and particulars thereof as hereinabove specified.

AS TO THE BAR'S COUNT V

31. Notwithstanding that respondent verified Kaiser's agreement

with and representations to the lender, including the specific representations regarding no secondary financing, respondent nonetheless actively participated with Kaiser in rendering Kaiser's averments regarding no secondary financing to constitute a lie and deceit by preparing, causing to be executed and recording the second and third purchase money notes and mortgages as hereinabove referenced.

AS TO THE BAR'S COUNT VI

32. I find no violations by respondent in connection with Count VI of the bar's complaint.

"STIPULATED FINDINGS OF FACT REGARDING POST HEARING ALLEGATIONS"

WHITE TRANSACTION

33. Heretofore, in 1988, one Kathleen White ("White") entered into an agreement with one Lance Lovejoy ("Lovejoy") wherein and whereby Lovejoy agreed to sell to White, who agreed to purchase the same, for an agreed upon price of \$182,000.00, real property situate at Palm Beach County, Florida.

34. The purchase and sale, aforesaid, was subject to and contingent upon White's securing a first mortgage loan from The Greater New York Mortgage Corporation of Florida ("lender") in the principal sum of \$135,000.00.

35. The lender agreed to advance the subject \$135,000.00 first mortgage loan and selected respondent who agreed to act as the closing agent in the transaction and, as an attorney agent for Attorneys' Title Insurance Fund, Inc., to issue a mortgage title insurance policy in the principal amount of the lender's mortgage loan.

36. Upon selecting respondent as closing agent, the lender issued to respondent certain written closing instructions, which written instructions, recited, inter alia, as follows:

Secondary financing has been approved in the amount of \$ NONE.

37. At the time White and Lovejoy entered into the agreement of purchase and sale, there **was** extant a certain mortgage lien affecting title to the subject premises held by John S. Maggard and Donna M. Maggard ("Maggards") in the principal sum of \$40,000.00.

38. Respondent prepared, had executed and recorded a satisfaction of the White note and mortgage to Maggard's,

39. In preparation for the subject closing, respondent secured White's signature to a Fannie Mae Affidavit and Agreement Form 1009 verified January 12, 1988. The referenced affidavit and agreement recited, inter alia, **as** follows:

Representation No. 4 there is no subordinate financing relating to the Property except as specifically set forth immediately below : NONE

40. Having received written closing instructions specifying that there was no secondary financing approved and having secured White's signature to the referenced affidavit and agreement which expressly recited that there was no subordinate financing relating to the subject property, respondent nonetheless, without disclosure to or consent by the lender, prepared and secured White's signature to a second note and mortgage in the principal sum of \$25,000.00 in favor of Maggard's and acted as notary to the acknowledgement of a third note and mortgage in the principal sum of \$5,000.00 in favor of one Susan Blair-Sheets ("Sheets").

41. Respondent thereafter closed title to the subject property on January 12, 1988 and completed a U.S. Department of Housing and Urban Development Settlement Statement purporting to set forth the particulars of the closing,

42. Notwithstanding that the settlement statement he completed specified at item 303 thereof that cash in the sum of \$51,747.58 was produced by White to pay the balance due and owing on account of the purchase price, borrower's costs and adjustments, the only cash, if any, produced at the closing by White, was in the sum of \$21,747.58.

43. Notwithstanding the settlement statement respondent completed specified no existing loans taken subject to and no second mortgage loan at items 203 and 204, respectively, respondent knowingly prepared, had executed and recorded a second note and mortgage from White to Maggards in the principal sum of \$25,000.00 and notarized the acknowledgement to a third note and mortgage in the principal sum of \$5,000.00 given by White to Sheets which notes and mortgages produced a disparity from the subject settlement statement in the sum of \$21,747.58.

44. On or about January 21, 1988 respondent issued a mortgagee title insurance policy #MP970713 to the lender in the principal amount of its mortgage, viz ., \$135,000.00.

45. **The** mortgagee title insurance policy failed to disclose **the** existence of the second note and mortgage given by White to Maggards despite the fact that respondent prepared such note and mortgage and failed to disclose the existence of the third note and mortgage given by White to Sheets despite the fact that respondent notarized the acknowledgement appearing on such note and mortgage.

46. Thereafter respondent provided the lender with copies of the mortgage title policy and loan settlement statement but made no disclosure to the lender regarding the secondary and tertiary financing **and** particulars thereof **as** hereinabove specified.

47. Notwithstanding that respondent prepared and secured White's verified execution of the Fannie Mae affidavit and agreement aforesaid, respondent nonetheless actively participated with White in rendering her averments and representations concerning secondary financing to constitute **a lie and** deceit **by** preparing, causing **to be** executed **and** recording the second note and mortgage and **by** notarizing the acknowledgement appearing on the third note and mortgage **as** hereinabove referenced.

GODFREY TRANSACTION

48. Heretofore, in 1987, one Wanda A. Godfrey ("Godfrey") entered into an agreement with one Lance Lovejoy ("Lovejoy") wherein and whereby Lovejoy agreed to sell to Godfrey, who agreed to purchase the same, for an agreed upon price of \$75,000.00, real property situate at North Lauderdale, Florida.

49. The purchase and **sale**, aforesaid, was subject to and contingent upon Godfrey's securing a first mortgage loan from The Greater New York Mortgage Corporation of Florida ("lender") in the principal sum of \$54,000.00.

50. The lender agreed to advance the subject \$54,000.00 first mortgage loan and selected respondent **who** agreed to act as the closing agent in the transaction and, **as** an attorney agent for Attorneys' Title Insurance Fund, Inc., to issue **a** mortgage title insurance policy in the principal amount of the lender's mortgage loan.

51. Upon selecting respondent as closing agent, the lender issued to respondent certain written closing instructions, which written instructions, recited, inter alia, as follows:

Secondary financing has been approved in the amount of \$ NONE.

52. At the time Godfrey and Lovejoy entered into the agreement of purchase and sale, there was extant a certain mortgage **lien** affecting title to the subject premises held by William S. Lehman and Thelma C. Lehman ("Lehmans") in the principal sum of \$49,000.00.

53. Respondent prepared, had executed and recorded a satisfaction of the Godfrey note and mortgage to Lehmans.

54. In preparation for the subject closing, respondent secured Godfrey's signature to a Fannie Mae Affidavit and Agreement Form 1009 verified November 24, 1987. The referenced affidavit notarized by respondent, and agreement, recited, inter alia, as follows:

Representation **No. 4** there is no subordinate financing relating to the Property except as specifically set forth immediately below: **NONE**

55. Having received written closing instructions specifying that there was no secondary financing approved and having secured Godfrey's signature to the referenced affidavit and agreement which expressly recited that there was no subordinate financing relating to the subject property, respondent nonetheless, without disclosure to or consent by the lender, prepared and secured Godfrey's signature to a second note and mortgage in the principal sum of \$34,000.00 in favor of Lehmans.

56. Respondent thereafter closed title to the subject property on November 24, 1987 and completed a U.S. Department of Housing and Urban Development Settlement Statement purporting to set forth the particulars of the closing.

57. Notwithstanding that the settlement statement he completed specified at item 303 thereof that cash in the sum of \$24,456.58 was produced by Godfrey to pay the balance due and owing on account of the purchase price, borrower's costs and adjustments, no such cash was paid.

58. Notwithstanding the settlement statement respondent completed specified no existing loans taken subject to and no second mortgage loan at items 203 and 204, respectively, respondent knowingly prepared, had executed and recorded a second note and mortgage from Godfrey to Lehmans in the principal sum of \$34,000.00, which note and mortgage produced a disparity from the subject settlement statement in the sum of \$34,000.00.

59. On or about January 12, 1988 respondent issued a mortgagee title insurance policy #MP970711 to the lender in the principal amount of its mortgage, viz., \$54,000.00.

60. The mortgagee title insurance policy failed to disclose the existence of the second note and mortgage given by Godfrey to Lehmans despite the fact that respondent prepared such note and mortgage.

61. Thereafter respondent provided the lender with copies of the mortgage title policy and loan settlement statement but made no disclosure to the lender regarding the secondary financing and particulars thereof as hereinabove specified.

62. Notwithstanding that respondent prepared and secured Godfrey's verified execution of the Fannie Mae affidavit and agreement aforesaid, respondent nonetheless actively participated with Godfrey in rendering her averments and representations concerning secondary financing to constitute a lie and deceit by preparing, causing to be

executed and recording the second note and mortgage as hereinabove referenced.

BLACKWOOD TRANSACTION

63. Heretofore, in 1988, one Cecile Blackwood ("Blackwood") entered into an agreement with one L & M Management of the Palm Beaches, Inc. ("L & M") wherein and whereby L & M agreed to sell to Blackwood, who agreed to purchase the same, for an agreed upon price of \$105,000.00, real property situate at Margate, Florida.

64. The purchase and sale, aforesaid, was subject to and contingent upon Blackwood's securing a first mortgage loan from The Greater New York Mortgage Corporation of Florida ("lender") in the principal sum of \$77,750.00.

65. The lender agreed to advance the subject \$77,750.00 first mortgage loan and selected respondent who agreed to act as the closing agent in the transaction and, as an attorney agent for Attorneys' Title Insurance Fund, Inc., to issue a mortgage title insurance policy in the principal amount of the lender's mortgage loan.

66. Upon selecting respondent as closing agent, the lender issued to respondent certain written closing instructions, which written instructions, recited, inter alia, as follows:

Secondary financing has been approved in the amount of \$ NONE.

67. At the time Blackwood and L & M entered into the agreement of purchase and sale, there was extant a certain mortgage lien affecting title to the subject premises held by Jean Lavigne and Lisa Lavigne ("Lavignes") in the principal sum of \$32,500.00.

68. Respondent prepared, had executed and recorded a satisfaction of the L & M note and mortgage to Lavignes.

69. In preparation for the subject closing, respondent secured Blackwood's signature to a Fannie Mae Affidavit and Agreement Form 1009 verified June 14, 1988 and notarized by respondent. The referenced affidavit notarized by respondent, and agreement, recited, inter alia, as follows:

Representation No. 4 there is no subordinate **financing** relating to the Property except as specifically set forth immediately below: NONE

70. Having received written closing instructions specifying that there was no secondary financing approved and having secured Blackwood's signature to the referenced affidavit and agreement which expressly recited that there was no subordinate financing relating to the subject property, respondent nonetheless, without disclosure to or consent by the lender, prepared and secured Blackwood's signature to a second note and mortgage in the principal sum of \$32,500.00 in favor of Lavignes.

71. Respondent closed title to the subject property on June 14, 1988 and completed a U.S. Department of Housing and Urban Development Settlement Statement purporting to set forth the particulars of the closing.

72. Notwithstanding that the settlement statement he completed specified at item 303 thereof that cash in the sum of \$33,235.47 was produced by Blackwood to pay the balance due and owing on account of the purchase price, borrower's costs and adjustments, no **such cash** was paid by Blackwood.

73. Notwithstanding the settlement statement respondent completed specified no existing loans taken subject to and no second mortgage loan at items 203 and 204, respectively, respondent knowingly prepared, had executed and recorded a second note and mortgage from Blackwood to Lavignes in the principal sum of \$32,500.00, which note and mortgage produced a disparity from the subject settlement statement in the sum of \$32,500.00.

74. On or about July 29, 1988 respondent issued a mortgagee title insurance policy #MP-1135211 to the lender in the principal amount of its mortgage, viz., \$77,750.00.

75. The mortgagee title insurance policy failed to disclose the existence of the second note and mortgage given by Blackwood to Lavignes despite the fact that respondent prepared such note and mortgage.

76. Thereafter respondent provided the lender with copies of the mortgage title policy and loan settlement statement but made no disclosure to the lender regarding the secondary financing and particulars thereof as hereinabove specified.

77. Notwithstanding that respondent prepared and secured Blackwood's verified execution of the Fannie Mae affidavit and agreement aforesaid, respondent nonetheless actively participated with Blackwood in rendering her averments and representations concerning secondary financing to constitute a lie and deceit by preparing, causing to be executed and recording the second note and mortgage as hereinabove referenced.

III. RECOMMENDATIONS AS TO WHETHER OR NOT THE RESPONDENT SHOULD BE FOUND GUILTY:

I find with **respect** to Counts I, II, IV and V of the **bar's** complaint and the stipulated facts pertaining to post hearing allegations, that, **as** closing agent, respondent occupied a fiduciary relationship to the lender. I find further that respondent's acts, **as** hereinabove recited, were **done** knowingly and intentionally and constituted fraud as a matter of law. Thus, referring to the counts as alleged in the bar's complaint and to the stipulated facts, I **make** the following recommendations:

AS TO THE BAR'S COUNT I

A. By violating the express written instructions of the lender regarding secondary financing, by creating the documentation, securing the execution thereof and recording the second purchase money note and mortgage, all without the consent of or disclosure to the lender, respondent violated Rule 3-4.3, Rules of Discipline which provides that the commission by a lawyer of any act which is unlawful or contrary to honesty and justice may constitute a cause for discipline **and** Rules 4-8.4(a) and 4-8.4(c), Rules of Professional Conduct which provide, respectively, that a lawyer **shall not** violate or attempt to violate the Rules of Professional Conduct or do so through the acts of another and that a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

AS TO THE BAR'S COUNT II

B. By knowingly participating with Tag to create secondary financing which secondary financing rendered Tag's averments and representations to the lender a lie and deceit, respondent violated Rule 3-4.3 Rules of Discipline, which provides that the commission **by** an attorney of any act which is unlawful **or** contrary to honesty and justice may constitute a cause for discipline and **Rule** 4-8.4(a) and 4-8.4(c), Rules of Professional Conduct, which provide, respectively, that a lawyer shall not violate or attempt to **violate** the Rules of Professional Conduct or do so through the acts of another and a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

AS TO THE BAR'S COUNT III

C. I find no violation.

AS TO THE BAR'S COUNT IV

D. By violating the express written instructions of the lender **regarding** secondary financing, by creating the documentation, securing the execution thereof and recording the second and third purchase money notes and mortgages, all without the consent of or disclosure **of** the lender, respondent violated Rule 3-4.3, Rules of Discipline which provides that the commission by **a** lawyer of any act which is unlawful or contrary to honesty and justice may constitute a cause for discipline and Rules 4-8.4(a) and 4-8.4(c), Rules of Professional Conduct which provide, respectively, that a lawyer shall not violate or attempt to violate the Rules of Professional Conduct or do so through the acts of another and that a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

AS TO THE BAR'S COUNT V

E. By acting as notary public and verifying Kaiser's affidavit and agreement (Exhibit 8) and then knowingly participating with Kaiser to create secondary financing which secondary financing rendered Kaiser's averments and representations to the lender a lie and deceit, respondent violated Rule 3-4.3, Rules of Discipline, which provides that the commission by a lawyer of any act which is unlawful or contrary to honesty and justice may constitute a cause for discipline and Rules 4-8.4 (a) and 4-8.4(c), Rules of Professional Conduct, which provide, respectively, that a lawyer shall not violate or attempt to violate the Rules of Professional Conduct or do so through the acts of another and a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

AS TO THE BAR'S COUNT VI

F. I find no violation.

**AS TO THE STIPULATED FACTS PERTAINING TO
POST HEARING ALLEGATIONS**

G. By violating the express written instructions of the lender regarding secondary financing, by creating the documentation, securing the execution thereof and recording the second notes and mortgages and in the **White** transaction by notarizing the acknowledgement to the third note and mortgage, all without the consent of or disclosure to the lender, respondent violated Rule 3-4.3, Rules of Discipline which provides that the commission by a lawyer of any act which is unlawful or contrary to honesty and justice may constitute a cause for discipline **and** Rules 4-8.4(a) and 4-8.4(c), Rules of Professional Conduct which provide, respectively, that a lawyer shall not violate or attempt to violate the Rules of Professional Conduct or do so through the acts of

another and that a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

H. By knowingly participating with White, Godfrey and Blackwood to create secondary financing which **secondary** financing rendered White's, Godfrey's and Blackwood's averments and representations to the lender a lie and deceit, respondent violated Rule 3-4.3 Rules of Discipline, which provides that the commission by an attorney of any act which is unlawful or contrary to honesty and **justice** may constitute a cause for discipline and **Rule 4-8.4(a) and 4-8.4(c)**, Rules of Professional Conduct, which provide, respectively, that a lawyer shall not violate or attempt to violate the Rules of Professional Conduct or do so through the acts of another and a lawyer shall not **engage** in conduct involving dishonesty, fraud, deceit, or misrepresentation.

IV. RECOMMENDATIONS AS TO DISCIPLINARY MEASURES TO BE APPLIED:

My recommendation, before being made aware of the stipulated facts regarding post hearing allegations, was that the court impose as a sanction in this case that respondent receive a public reprimand and be suspended from the **bar** for a period of sixty (60) days. Having now considered the additional misconduct embraced by such stipulation, my recommendation is that respondent receive a public reprimand and be suspended for a period of **six (6) months**. As mitigation, I find that neither personal **gain** nor greed was the motive for respondent's misconduct and I further find it unlikely that any such conduct will be repeated.

V. PERSONAL HISTORY:

Respondent is 42 years of age and has been a member of The Florida Bar since October 18, 1973.

VI. STATEMENT AS TO PAST DISCIPLINE:

Respondent has no prior disciplinary history.

VII. STATEMENT OF COSTS OF THE PROCEEDING AND
EXCERPTS:

Administrative Costs	\$ 500.00
Investigator's Costs	339.00
Subpoena Fees	30.00
Deposition Transcript	380.53
Final Hearing Transcript and Attendance	548.16
Post Hearing Transcript	133.00
Referee Conference (Transcript)	75.25
Referee's Costs	75.00
<u>TOTAL</u>	<u>\$ 2,080.94</u>

I recommend that such costs be taxed against the respondent.

RENDERED this 31st day of May, 1991 at Stuart, Florida.



STEWART R. HERSHEY, REFEREE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing report of referee was furnished to John A. Weiss, Esquire, Attorney for Respondent, 101 N. Gadsden St., P.O. Box 1167, Tallahassee, FL 32302 and to David M. Barnovitz, Esquire, Bar Counsel, The Florida Bar, 5900 N. Andrews Ave., Ste. 835, Ft. Lauderdale, FL 33309 by regular mail on this 31st day of May, 1991.



STEWART R. HERSHEY, REFEREE