

**FILED**  
SID J. WHITE  
MAY 8 1992  
CLERK, SUPREME COURT  
By \_\_\_\_\_  
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

The Florida Bar,  
Complainant,

v.

Case No. 76,154

THOMAS P. MURPHY,  
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, hearings were held on September 5, and 6, 1991 and December 23, 1991.

The following attorneys appeared as counsel for the parties: Warren J. Stamm, Esq., for the Florida Bar and Burton Young, Esq., for the 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:

As to Count I, the parties stipulated that a correct fee would be 40% under the terms of the contract because it had been referred to arbitration. However, I find that said correct fee of 40% is irrelevant to the matters before this referee.

The original contract provided for legal services to be outlined by the terms of the closing statement that Mr. Murphy, the Respondent, was to prepare and that this would be the controlling

document (See Fla. Bar Exhibit #1). Funds would only be disbursed under the terms of the settlement of the closing statement and **this** prepared closing statement clearly indicated a thirty three and a third percent fee (Fla. Bar Exhibit #5). This was **prepared by** Mr. Murphy.

Mr. Murphy's position that the additional fees were at his client's insistence is not convincing to this referee and is not supported by the evidence. Accepting Mr. Murphy's position, would place him in the interesting situation of having violated his own agreement with the original California lawyer by failing to pay him his fair share of the fees. Further, the payment by the three different checks and the designation on the checks to be alone give greater credence to Mrs. Wagner's testimony than **it** does to Mr. Murphy's.

Although it was clearly indicated that Mr. Murphy was perhaps entitled to the **40%** fee under the original terms of the contract, he did not seek to collect on that basis, having rather provided Mrs. Wagner with a closing statement for a thirty three and a third percent (**33 1/3%**) fee, he then coerced her to pay the additional payments outside of the terms of the contract.

**As to** Count 11, I find that there is not clear and convincing evidence that Mr. Murphy took an undeserved cash fee in the cash transaction settling these policies. Again, Mr. Murphy did use a closing statement that was incorrect in which he indicated no fee (See Fla. Bar Exhibit #9). His explanation that he did not think it was necessary because at the same time he had a signed promissory note (**See** note attached to Fla. Bar Exhibit #9), does

not measure up to the way that he had handled all other matters in the past. In fact he clearly indicated by his testimony these two closing statements (this one and the one in Count I), were the only ones in his whole practice in which he ever deviated at all. However, this matter is not a situation of taking an excess fee but rather whether he was entitled to a fee or not.

No evidence was presented other than Mrs. Wagner's testimony of the information provided to her through the insurance company. This is hearsay **and** although hearsay is admitted it would need some additional bolstering. There was opposing evidence in this case because there was correspondence between the insurance company and Mr. Murphy, all being at the time of the very last of the transaction. I find that there is not clear and convincing evidence that this final statement was not made in regard to the work done.

**II Recommendation 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 Count I,** I recommend that the respondent be found guilty and specifically that he be found guilty of the following violations of Rules 4-1.5, and 4-8.4 to wit: coercing additional fees from client and hiding the notice of such fees (loan).

**As to Count II,** I recommend that the respondent be found not guilty.

**IV. Recommendation as to Disciplinary Measures to be Applied:** I recommend that the respondent be suspended from the practice of law for a fixed period of twelve (12) months and thereafter until respondent shall prove rehabilitation as is provided in

Rules 3-5.1(e), Rules of Discipline.

V. Personal History and Past Disciplinary Record: After a finding of guilty and prior to recommending discipline to be recommended pursuant to Rule 3-7.6(k)(1)(4), I considered the following personal history and prior disciplinary record of the respondent, to wit:

Age: 40

Date admitted to Bar: 11/18/77

No prior disciplinary matters

Having the support of many members of the **Bar** that were surprised that **Mr.** Murphy would handle any transactions like this. The overwhelming testimony both through affidavit and through members of the **Bar** that Mr. Murphy always conducted himself excellently. On further questioning, none of them had ever known him to deviate from normal procedures and were surprised that he would in fact have done so in this particular instance.

VI. Statement of Costs and Manner in which Cost should be taxed:

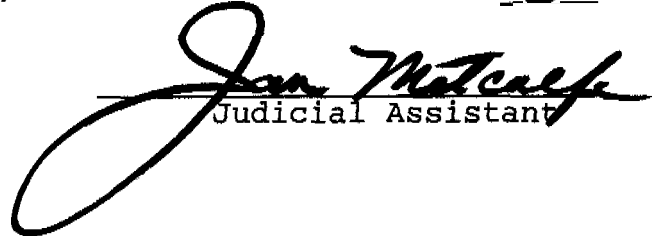
No statements of costs have been provided to the referee at this time and I hereby withhold ruling on any costs and will allow them to be submitted by affidavit by the Florida Bar.

Dated this 6<sup>th</sup> day of MAY, 1992.

  
\_\_\_\_\_  
Referee

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above report of referee has been furnished by mail to Warren Jay Stamm, bar counsel at 444 Brickell Avenue, Ste M-100, Miami, Fl 33130; Burton Young, respondent's counsel, 17071 West Dixie Highway, P. O. Box 600 550. North Miami Beach, Fl 33160; and Staff Counsel, the Florida Bar, 650 Apalachee parkway, Tallahassee, Florida 32399-2300 this 6 day of May, 1992.

  
Judicial Assistant