

FILED
DEC 6 1990
CLERK OF SUPREME COURT
By _____
Deputy Clerk

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Case No. 76,250
[TFB Case No. 89-30,750 (07C)]

v.

ROBERT E. KRAMER,

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 Regulating The Florida Bar, a hearing was held on October 30, 1990. The Pleadings, Notices, Motions, Orders, Transcripts and Exhibits, all of which are forwarded to The Supreme Court of Florida with this report, constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar Jan Wichrowski
 David G. McGunegle

For The Respondent In pro se

II. Findings of Fact as to Each Item of Misconduct of which the Respondent is charged: After considering all the pleadings, testimony, and evidence before me, pertinent portions of which are commented on below, I find:

T = Transcript of October 30, 1990.

1. Robert E. Kramer 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. Respondent resided and practiced law in Volusia County, Florida, at all times material.
3. Respondent represented Mr. Elmer L. Flanary in October of 1986 regarding a loan of approximately \$22,000.00 to Mr. Fred Hill in a transaction generally referred as the "Shanklin deal". Mr. Flanary actually purchased the payments on twenty-two mortgage payments on five lots in Trigg County, Kentucky, (TFB Ex. 3). Mr. Davis

Hamilton, a mortgage broker, led Mr. Flanary to believe that this was a good investment, based upon an appraisal of the property, (TFB Ex. 2, T-21-22).

4. Mr. Flanary looked to respondent to protect his legal interests, since Mr. Flanary had only obtained a 4th grade education, T-17-18, and respondent has associated with him in other matters as an attorney, T-18-19, (TFB Ex. 10).
5. The Shanklin deal was documented by an assignment naming Fred Hill as assignor and Elmer Flanary and Helen Binder and Alice Bahery as assignees. This assignment of mortgage, dated October 23, 1986, assigned five mortgages on the five lots which named the Shanklin Family Trust as the mortgagor (TFB Ex. 3). At that time Shanklin Family Trust did not own the properties described in the mortgage. Respondent did not advise Mr. Flanary of this fact. T-24 (TFB Exs. 3, 4). Mr. Flanary acted on behalf of Helen Binder and Alice Bahery via their power of attorney.
6. On or about November 8, 1986, the Kentucky lots were transferred from the owners, R.C. Canfield, et. al. to the Shanklin Family Trust for the purchase price of \$42,500.00, (TFB Ex. 4).
7. Mr. Flanary failed to receive any payments in return for his \$22,000.00 loan. The one check he received was unnegotiable, (TFB Ex. 5, T-29). Based upon this default, Mr. Flanary contacted the respondent and requested that he foreclose on the property. As attorney for Mr. Flanary, respondent contacted a law firm in Kentucky to foreclose on the property, T-29-31.
8. Eventually a default was obtained against the Shanklin Family Trust. Correspondence between the Kentucky law firm and Mr. Kramer indicates that Mr. Kramer acted as Mr. Flanary's Florida counsel in this action. T-31, (TFB Exs. 6, and 15-17).
9. Mr. Flanary bid the sum of \$14,740.00, to successfully obtain the property in default. On December 28, 1987 Mr. Flanary was advised that the property transferred into Mr. Flanary's name could not be finalized until a Kentucky master commissioner's fee of approximately \$756.20 had been paid, T-31, 32.
10. On or about January 15, 1988 respondent loaned Mr. Flanary the sum of \$2,500.00 in order to pay the fees

and costs of the foreclosure litigation and finalize the transfer by paying the master commissioner's fee, T-31-36.

11. This was not actually a loan since respondent had Mr. Flanary execute a deed to the Kentucky lots naming respondent as the grantee on the date he received the \$2,500.00. He also prepared an option contract giving Mr. Flanary the option of repurchasing the Kentucky property from the Respondent for the sum of \$2,500.00 at 18% interest, within six months. The option contract provided that it became null and void upon default of any payment, (TFB Exs. 7, 8).
12. Mr. Flanary's reading ability is very limited. T-17, 18. Respondent failed to disclose the transaction and terms upon which the business transaction between Mr. Kramer and Mr. Flanary was made. The transaction and the terms were not fair and reasonable to the client, who thought that he was getting a mortgage, and were not disclosed and transmitted in writing to the client in a manner in which the client could reasonably understand. Respondent took attorney fees of \$125.00 for himself out of the \$2500.00 transaction with Mr. Flanary. Further, the client was not given a reasonable opportunity to seek the advice of independent counsel in the transaction since the deal closed on the same day that it was requested within a matter of hours. He also was not advised by respondent of any conflict of interest or potential of same in their positions nor advised he should seek independent advise of counsel before entering into the transaction. Further, the client did not consent to the transaction in writing as required by Rule 4-1.8.
13. Mr. Flanary defaulted in his payments to respondent. On February 5, 1988 Mr. Flanary received a check from respondent for \$49.87. Respondent's trust account check for this payment stated that the check was for sales proceeds of the Kentucky property. Respondent transferred his interest in the property to another party for \$3,000.00. Mr. Flanary did not realize that a default in his payments would result in immediate loss of any potential interest in the Kentucky property since he thought it was a mortgage. In the past he had often become delinquent in mortgages associated with Mr. Kramer and had been able to bring his payments up to date without substantial prejudice, T-36. After he

received the check for \$49.87 he consulted another attorney who explained the transaction, T-37-38. After Mr. Flanary retained other counsel, respondent contacted the other counsel offering to help Mr. Flanary collect on the Shanklin judgement if Mr. Flanary agreed to pay off debts owed to Mr. Kramer's other clients, T-79-81, (TFB Ex. 11).

14. Further, a balance sheet was admitted into evidence on the financial status of the Shanklin Family Trust, (TFB Ex. 13). The testimony indicated that Mr. Flanary had found this document among other documents in Mr. Davis Hamilton's possession. There is no evidence indicating who had prepared the document or its accuracy.

III. Recommendations as to whether or not the Respondent should be found guilty: I recommend that the respondent be found guilty and specifically that he be found guilty of violating the following disciplinary rules of the Rules of Professional Conduct: Rule 4-1.7(b)(1) for representing a client when his exercise of independent professional judgement is materially limited by the lawyer's responsibilities to another client or to a third person or by a lawyer's own interests; Rule 4-1.7(b)(2) for failing to receive the consent after consultation; Rule 4-1.7(c) for failing to explain the advantages and risks involved in the representation of multiple clients in a single matter; Rule 4-1.8(a)(1) for failing to reasonably disclose the transaction and terms and transmit them in writing to the client in a manner which can be reasonably understood by the client; Rule 4-1.8(a)(2) for failing to give the client a reasonable opportunity to seek the advice of independent counsel in the transaction; Rule 4-1.8(a)(3) for failing to receive client's consent in writing thereto.

IV. Recommendation as to Disciplinary measures to be applied: Based upon the foregoing facts and findings, I recommend that the respondent be privately reprimanded by the Board of Governors of The Florida Bar and that he pay the costs of this proceeding.

V. Personal History and Past Disciplinary Record: After the finding of guilty and prior to recommending discipline to be recommended pursuant to Rule 3-7.5(k)(4), I considered the following personal history and prior disciplinary record of the respondent, to wit:

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Age: 35
Date admitted to Bar: April 2, 1980.
Prior Disciplinary convictions and disciplinary
measures imposed therein: None.

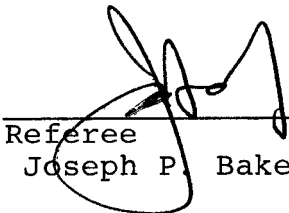
VI. Statement of costs and manner in which costs should be
taxed: I find the following costs were reasonably
incurred by The Florida Bar.

A.	Grievance Committee Level Costs	
	1. Transcript Costs	\$ 883.90
	2. Bar Counsel/Branch Staff Counsel Travel Costs	\$ 118.90
B.	Referee Level Costs	
	1. Transcript Costs	\$ 701.75
	2. Bar Counsel/Branch Staff Counsel Travel Costs	\$ 4.50
C.	1. Administrative Costs	\$ 500.00
D.	Miscellaneous Costs	
	1. Investigator Expenses	\$ 158.37
	2. Telephone Costs	\$ -0-
	3. Witness Fees	\$ -0-
	4. Title Abstract	\$ 75.00

TOTAL ITEMIZED COSTS: \$2616.52

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, and that interest at the statutory rate shall accrue and be payable beginning 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 5th day of December, 1990.



Referee
Joseph P. Baker

Original to: Supreme Court of Florida with original Exhibits
and transcript.

Copies to:

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