

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

The Florida Bar,  
Complainant,

v.

HARVEY L. WEISS,  
Respondent.

CASE NO. 76-407

FILED

SID J. WHITE

DEC 1 1990

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

REPORT OF REFEREE

I. Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the Rules of Discipline, hearing was held on Friday, October 26, 1990.

The following attorneys appeared as counsel for the parties:

For the Florida Bar, James N. Watson, Jr.

For the Respondent, No attorney.

Respondent elected not to appear.

II. After considering all the pleadings and evidence before me, pertinent portions of which are commented upon below, I find the Respondent violated the following Rules:

3-4.3 (the commission by a lawyer of any act which is unlawful or contrary to honesty and justice), of the Rules of Discipline of The Florida Bar, and Rules 4-1.15(a) (a lawyer shall hold in trust, separate from the lawyer's own property, funds and property of clients or third persons that are in a lawyer's possession in connection with a representation. All funds, including advances for costs and expenses, shall be kept in a separate account maintained in the state where the lawyer's office is situated or

elsewhere with the consent of the client or third person, provided that funds may be separately held and maintained other than in a bank account if the client specifically instructs, in writing, that such be done. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of six (6) years after termination of the representation), 4.1.15(b) (upon receiving funds or the property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property), 4.1.15 (c) (when in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be treated by the lawyer as trust property, but the portion belonging to the lawyer or law firm shall be withdrawn within a reasonable time after it becomes due unless the right to the lawyer or law firm to receive it is disputed, in which event the portion in dispute shall be kept separate by the lawyer until the dispute is resolved), 4-8.4(a) (a lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do

so, or do so through the acts of another), 4-8.4(b) (a lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects), and 4-8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation), of the Rules of Professional Conduct of The Florida Bar.

The Referee hereby incorporates Florida Bar Exhibit "A", Affidavit and Report of New Jersey State Bar Auditor as specific findings of violations of the Florida Bar Rules of Professional Conduct concerning Trust Accounts.

The Audit Report shows a conversion and misappropriation of trust funds belonging to the Respondent's clients. All the overdrafts and all negative balances represent misappropriation for the personal use of Respondent and his law firm.

III. As to each count of the complaint I make the following recommendations as to guilt or innocence:

I recommend that the respondent be found guilty and specifically that he be found guilty of the following violations of the Rules of Discipline, Rules of Professional Conduct and Rules Regulating Trust Account, to wit:

3-4.3 (the commission by a lawyer of any act which is unlawful or contrary to honesty and justice), of the Rules of Discipline of The Florida Bar, and Rules 4-1.15(a) (a lawyer shall hold in trust, separate from the lawyer's own property, funds and property of

clients or third persons that are in a lawyer's possession in connection with a representation. All funds, including advances for costs and expenses, shall be kept in a separate account maintained in the state where the lawyer's office is situated or elsewhere with the consent of the client or third person, provided that funds may be separately held and maintained other than in a bank account if the client specifically instructs, in writing, that such be done. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of six (6) years after termination of the representation), 4.1.15(b) (upon receiving funds or the property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property), 4.1.15 (c) (when in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be treated by the lawyer as trust property, but the portion belonging to the lawyer or law firm shall be withdrawn within a reasonable time after it becomes due unless the right to the lawyer or law firm to

receive it is disputed, in which event the portion in dispute shall be kept separate by the lawyer until the dispute is resolved), 4-8.4 (a) (a lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another), 4-8.4(b) (a lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, and 4-8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation), of the Rules of Professional Conduct of The Florida Bar.

IV. I recommend that the respondent be disbarred from the practice of law in Florida.

V. After finding of guilty and prior to recommending discipline to be recommended pursuant to Rules 3-7.6(k)(1)(4), I considered the following personal history and prior disciplinary record of the respondent, it wit:

Age: 52 years  
Dated admitted to Bar: November 15, 1963  
Disciplinary convictions or disciplinary measures have been imposed by the State of New Jersey.

VI. I find the following costs were reasonably incurred by The Florida Bar.

Referee Level

Administrative Costs, pursuant to	
Rule 3-7.6(k)(1), Rules of Discipline	\$500.00
Court Reporter Fees and Transcripts	<u>68.00</u>
Bar Counsel Travel Expenses	
TOTAL	\$568.00