

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

FILED

SID J. WHITE

MAY 18 1991

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

THE FLORIDA BAR,

Complainant,

v.

JOHN R. FORBES,

Respondent.

Case No. 76,451

TFB File No. 91-00030-04B

REPORT OF THE REFEREE

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rule 3-7.6, Rules of Discipline, the following proceedings occurred:

On August 13, 1990, The Florida Bar filed its Complaint against Respondent as well as its Request for Admissions in these proceedings. All of the aforementioned pleadings, responses thereto, exhibits received in evidence, and this Report constitute the record in this case and are forwarded to the Supreme Court of Florida.

II. FINDINGS OF FACT

A. Jurisdictional Statement. Respondent is, and at all times mentioned during this investigation was, a member of The Florida Bar, subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida.

B. Narrative Summary Of Case.

Respondent was indicted by a Federal Grand Jury on November 1, 1989 on one count of Conspiracy to Defraud the United States in violation of Title 18, U.S.C. §371; one count of Fraud in violation of Title 18, U.S.C. §§1014 and 2; and ten counts of Bank Fraud in violation of Title 18, U.S.C. §§1344 and 2. Bar's Exhibit 1.

The basis of the criminal conduct centered around the Respondent's efforts to finance the development of a real estate project in Green Cove Springs. As set forth in the Bar's No. 3 Exhibit, Respondent's Plea Agreement, the specific factors of the criminal conduct are as follows:

John R. Forbes is a Jacksonville attorney who formerly served as chairman of the Downtown Development Authority and a member of the Florida House of Representatives. Forbes was the developer of a real estate project in the Green Cove Springs, Clay County area, known as the Hoyt House, which was originally planned as a 10-unit condominium project on the St. Johns River. It was ultimately financed by a \$750,000 loan to Forbes from First Federal Savings and Loan Association of Jacksonville (hereinafter "First Federal"), the

deposits of which were insured at all times relevant to these facts by the Federal Savings and Loan Insurance Corporation.

Forbes' loan with First Federal was based on a \$350,000 preliminary estimate for the construction/renovation costs. When the actual bid came in on November 1, 1984 at approximately \$650,000, Forbes obtained another bid from Michael Miller, a local contractor with whom he had dealt before. Miller gave Forbes an estimate of \$547,000, but this still was not low enough. On November 3, 1984, Forbes, Miller, Miller's wife, and Harvey Manss, the project architect, met and eliminated two of the condominiums, the recreation room, the elevator, and various other features from the project, in order to get the construction costs down to \$425,000, with Forbes telling Miller and Manss he would pay the \$75,000 difference with his personal funds.

Manss prepared both contracts, which were signed later that week, although the \$350,000 contract was backdated to October 20, 1984, and the \$425,000 contract was backdated to November 3, 1984 (separate dates and different forms were used to make them look more authentic). Only the \$350,000 contract was forwarded to the bank. The \$350,000 contract was not only false and fraudulent as to its date and price, but also as to the scope of work. It included all of the items noted above that were deleted from the true contract, even though it was drafted by Manss after it was agreed those items would be deleted. Thus, it represented to the bank a scope of work that would have been worth at least the \$547,000 bid of Miller, before the deletions were made. Officers of First Federal have

confirmed that these false statements were material to their loan decision.

Subsequently, Miller was unable to obtain from Forbes the additional funds due him. Miller and his subcontractors filed liens against the property in late 1985. In April 1986, First Federal filed a foreclosure suit against the property.

As part of Respondent's plea agreement, he admitted knowingly making or causing to be made a materially false statement in the construction contract that was submitted to First Federal Savings and Loan in an effort to obtain financing. Respondent also admitted he made or caused to be made a misrepresentation as to the amount of the contract sum in the construction contract upon which First Federal Savings and Loan relied upon in making its decision to approve the requested financing.

Respondent was totally responsible to First Federal Savings and Loan for the loan application and the contract submissions since the loan was being made to Respondent individually. It is clearly evident that he was well aware of the fact that there were two separate contracts reflecting different costs and that the contract submitted to First Federal Savings and Loan improperly reflected the actual contract cost.

From Respondent's testimony it is apparent that he has assisted the federal authorities in prosecuting this matter and investigating other matters. It also appears that Respondent is remorseful for what he has done. Respondent has no prior disciplinary record other

than the present suspension he is under for the conviction that is the subject matter of this case.

It is undisputed that Respondent was convicted of violating Count 2 of the federal indictment upon a plea of guilty. This was a charge of knowingly and willfully making materially false statements in a document submitted to First Federal Savings and Loan to influence its actions for granting a loan to Respondent. Upon his conviction, Respondent was sentenced to two years in prison with the condition that he only serve six months in confinement. This violation constitutes a felony.

Pursuant to Rule 3-7.2(b), Rules of Discipline, Respondent's conviction is conclusive proof of guilt of the criminal offense charged in the indictment.

III. RECOMMENDATIONS AS TO GUILT.

I recommend that Respondent be found guilty of violating article XI, Rule Rule 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 4-8.4(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. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that he be disciplined as set forth herein:

- A. Based upon the felony conviction of the Respondent and the attendant facts thereto, it is my recommendation that the appropriate discipline in this matter would be disbarment. In recommending disbarment, the following Standards for Imposing Lawyer Sanctions were deemed appropriate:

5.11(a) - Failure to Maintain Personal Integrity

Disbarment is appropriate when a lawyer is convicted of a felony under applicable law.

5.11(b) - Failure to Maintain Personal Integrity

Disbarment is appropriate when a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft.

5.11(e) - Failure to Maintain Personal Integrity

Disbarment is appropriate when a lawyer attempts or conspires or solicits another to commit any of the offenses listed in sections (a) - (d).

5.11(f) - Failure to Maintain Personal Integrity

Disbarment is appropriate when a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice law.

In aggravation I find the following factors present as set forth in the standards:

9.22(b) - Aggravation and Mitigation - Aggravation - Factors Which May Be Considered In Aggravation

Aggravating factors include dishonest or selfish motive.

9.22(i) - Aggravation and Mitigation - Aggravation - Factors Which May Be Considered In Aggravation

Aggravating factors include substantial experience in the practice of law.

In considering the testimony of Respondent and the facts in evidence, I find the following mitigating factors:

9.32(a) - Mitigation - Factors Which May Be Considered in Mitigation

Mitigating factors include absence of a prior disciplinary record.

9.32(e) - Mitigation - Factors Which May Be Considered in Mitigation

Mitigating factors include full and free disclosure to disciplinary board or cooperative attitude toward proceedings.

9.32(l) - Mitigation - Factors Which May Be Considered in Mitigation

Mitigating factors include remorse.

In view of Respondent's cooperation with the government's investigation and the mitigation present, I would recommend that Respondent's disbarment be retroactive to the date of his felony suspension, September 12, 1990.

B. Payment of costs in these proceedings.

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-7.6(k)(1), I considered the following personal history of Respondent, to wit:

Age: 51 years old

Date admitted to the Bar: June 10, 1968

Prior Discipline: None

VI. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

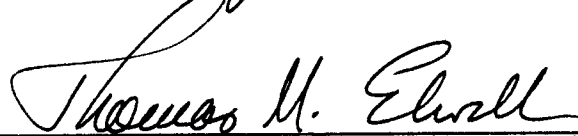
I find the following costs were reasonably incurred by The Florida Bar:

Referee Level

1. Administrative Costs	\$ 500.00
2. Court Reporter's Fees	376.20
3. Bar Counsel Travel	<u>152.70</u>
TOTAL	<u>\$1,028.90</u>

It is recommended that such costs be charged to 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 6th day of May, 1991.



THOMAS M. ELWELL, County Judge/Referee
201 East University Avenue
Gainesville, Florida 32602

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Report of Referee has been mailed to SID J. WHITE, Clerk of the Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32301, and that copies were mailed by regular U.S. Mail to JOHN T. BERRY, Staff Counsel, c/o JOHN A. BOGGS, Director of Lawyer Regulation, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300; JAMES N. WATSON, JR., Bar Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300; and J. RICHARD MOORE, Counsel for Respondent, at his record Bar address of 500 North Ocean Street, Jacksonville, Florida 32202, on this 10th day of May, 1991.



THOMAS M. ELWELL, Referee

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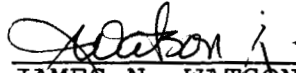
STATEMENT OF COSTS

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3. Bar Counsel Travel	<u>152.70</u>
TOTAL	<u>\$1,028.90</u>

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the fore-going Statement of Costs regarding Supreme Court Case No. 76,451;TFB File No. 91-00030-04B has been mailed by certified mail # P981-963-100, return receipt requested, to J. RICHARD MOORE, Counsel for Respondent, at his record Bar address of 500 North Ocean Street, Jacksonville, Florida 32202, on this 3rd day of may, 1991.



JAMES N. WATSON, JR.
Bar Counsel, The Florida Bar
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