

FILED

SID J. WHITE

SEP 13 1991

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

CASE NO. 76,866

v.

MARTIN L. BLACK,

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, a hearing was held on the following date: 18 April 1991.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: John V. McCarthy

For the Respondent: Martin L. Black, pro se

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:

(T = transcript of hearing;

A = Respondent's Answers to Request for Admissions;

BE = Bar exhibit;

RE = Respondent's exhibit)

1. Respondent, MARTIN L. BLACK, is a member of The Florida Bar, subject to the jurisdiction of the Supreme Court of Florida (A-A).

2. On or about 25 November 1986, Respondent was retained to represent Joe L. Frazier, Sr. in a workmen's compensation case (RE-1) (T-48).

3. Mr. Frazier's workmen's compensation claim was settled for \$76,000.00, and on or about 5 July 1989 a check was issued to the order of Mr. Frazier and Respondent (T-8)(BE-1).

4. Prior to 29 June 1989, Respondent's home, which is located at 512 East Duval Street, Lake City, Florida, was foreclosed on by Barnett Bank (A-D).

5. Prior to 5 July 1989, and prior to receipt of the workmen's compensation claim settlement check, Respondent asked Mr. Frazier for a loan of \$24,000.00 for a period of thirty days (BE-2)(BE-5)(T-108); Respondent was to deduct the loan directly out of any proceeds Mr. Frazier received from his workmen's compensation case (T-116)(BE-6).

6. At the time Mr. Frazier and Respondent entered into the loan agreement, Respondent was still representing Mr. Frazier as his attorney in the workmen's compensation case (T12-14).

7. Respondent agreed to pay Mr. Frazier \$2,000.00 interest over the period of the loan, which was thirty days (BE-5)(T-107).

8. When Respondent asked Mr. Frazier for the loan, he did not advise Mr. Frazier to seek outside counsel (T-70).

9. On or about 30 June 1989, Mr. Frazier agreed to loan Respondent \$24,000.00 (BE-2).

10. The interest rate on the note entered into between Respondent and Mr. Frazier amounts to 100% per year (BE-5). The loan was clearly usurious.

11. Respondent did not inform Mr. Frazier that the loan agreement Respondent prepared was, based upon its terms, unenforceable (T-109).

12. Respondent never explained to Mr. Frazier the potential conflicts of interest involved with the loan before it was made (T-115).

13. On or about July 1989, Respondent received \$12,000.00 as attorney's fees out of the settlement of the workmen's compensation claim (A-M).

14. On or about July 1989, Respondent received \$24,000.00 as a loan from Mr. Frazier, which was taken directly from the settlement proceeds check (A-N)(BE-6).

15. Settlement of the workmen's compensation claim resulted in payment to Mr. Frazier and Respondent in the amount of \$76,000.00. The cost of transferring the funds from Boston by wire was \$30.00. The money was disbursed through Barnett Bank, which charged \$13.00 for processing expenses, leaving \$75,957.00 to be distributed (BE-6) (T-22).

Respondent was credited with a fee of \$11,957.00 plus the loan from Mr. Frazier in the amount of \$24,000.00, making a total of \$35,957.00. From those funds, Respondent received a check for \$7,926.50, and the balance was paid to Barnett Bank of Suwannee Valley in the amount of \$28,030.50 as consideration for reconveyance to Respondent of his home after foreclosure. The balance of the settlement proceeds in the amount of \$40,000.00 was disbursed to Mr. Frazier by paying off his loan in the amount of \$11,717.72 and paying the remainder to Mr. Frazier in the amount of \$28,282.28 (BE-6)(BE-9)(T-23).

16. On or about 17 July 1989, as collateral for the \$24,000.00 loan, Respondent executed a mortgage deed and a loan note purporting to give Mr. Frazier a first mortgage on Respondent's residence, located at 512 East Duval Street, Lake City, Florida (A-P)(BE-3)(BE-4).

17. Respondent knew that he did not have title to the property when he executed the mortgage on 17 July 1989 (T-112)(BE-3). Since consideration for reconveyance of the property back to Respondent was to be paid directly from the settlement proceeds, it is possible to construe the transaction as being similar to a typical loan closing and title transfer situation. However, the failure to record the mortgage (A-U) left Mr. Frazier unprotected against judgment creditors and purchasers without notice.

18. On or about 20 July 1989 Barnett Bank executed a special warranty deed giving Respondent fee simple title to the property which was his home (A-R)(BE-9).

19. Respondent kept both the original mortgage deed and the original loan note, and gave Mr. Frazier a copy of each (A-S).

20. Respondent knew or should have known that Mr. Frazier's ability to enforce his rights with respect to the mortgage would be impaired unless he was given possession of the original note and mortgage.

21. It was Respondent's intent to use his home as collateral to get a loan and repay Mr. Frazier (A-E).

22. After mortgaging the property to Mr. Frazier, Respondent attempted to obtain a loan in order to repay him by using as collateral the same property he had mortgaged to Mr. Frazier (A-W).

23. When he was applying to lending institutions for a loan to pay back Mr. Frazier, Respondent failed to inform the banks that there was an unrecorded mortgage on the real property which he proposed to use as collateral. Respondent specifically intended that the mortgage to Mr. Frazier not appear in any title examination which might be done incident to a mortgage loan closing (T-119).

24. Respondent was unsuccessful in obtaining a loan from a

bank, using his property located at 512 East Duval Street, Lake City, Florida, as collateral (A-X).

25. Respondent did not repay the loan from Mr. Frazier in the thirty-day period required by the loan agreement (A-Y)(BE-5).

26. Respondent and Mr. Frazier modified the loan agreement several times, with Respondent giving Mr. Frazier additional sums of money as interest to induce him to agree to the modifications(T-25)(BE-7).

27. Respondent's payments of additional interest to Mr. Frazier was at a rate greater than 30% interest per year (T-142)(BE-7).

28. Respondent never informed Mr. Frazier that an interest rate of 30% or higher would make the loan agreement unenforceable (T-37).

29. When Respondent determined that he could not obtain a loan to repay Mr. Frazier his \$24,000.00, Respondent directed Mr. Frazier to apply for a mortgage loan, using Respondent's home property as collateral (T-122 through 129).

30. The terms of the proposed loan to Mr. Frazier were: (1) Respondent would transfer title to the property over to Mr. Frazier as collateral for the loan; (2) Respondent would make the monthly payments on Mr. Frazier's loan; and (3) if within 90 days Respondent paid Mr. Frazier the \$26,000.00 that he owed him, Mr.

Frazier would transfer the title back to Respondent (A-DD)(T-122 through 129).

31. Respondent never transferred title to the property to Mr. Frazier in his name alone (T-123).

32. Mr. Frazier believed that Respondent was acting as his attorney with respect to the loan application (T-35 and 36).

33. Mr. Frazier decided not to accept the terms of the loan because the lender would require Mr. Frazier to pledge a certificate of deposit as additional security (T-124 and 129).

34. As an alternate means of obtaining a loan, Mr. Frazier and Hattie M. Sealey, Respondent's mother, applied for a joint loan at Barnett Bank (A-HH).

35. In November 1989 Respondent conveyed his home property to Mr. Frazier and Ms. Sealey (A-II)(BE-8).

36. Respondent recorded the deed to his mother and Mr. Frazier, and kept the deed in his possession (A-JJ).

37. In February 1990, Barnett Bank approved Mr. Frazier's and Ms. Sealey's application for a loan (A-KK).

38. Mr. Frazier decided not to accept the joint loan (A-LL).

39. The documents marked as Bar Exhibits number 2, 3, 4, 5 and 8 were prepared by Respondent (A-MM).

40. Respondent repaid to Mr. Frazier the \$24,000.00 which he

had borrowed from him, plus approximately \$10,000.00 in monthly payments over a period of approximately one year (T-21)(T-142).

III. Recommendation as to Whether or Not the Respondent Should Be Found Guilty: As to the Complaint, I make the following recommendation as to guilt or innocence: I recommend that the Respondent be found guilty, and specifically, that he be found guilty of violating Rule 3-4.3 of the Rules of Discipline of The Florida Bar, and Rules 4-1.7(b), 4-1.8(a), and 4-8.4(d), of the Rules of Professional Conduct of The Florida Bar.

IV. Recommendation as to Disciplinary Measures to be Applied: I recommend that the Respondent be suspended from the practice of law for a period of three months and thereafter until Respondent shall prove rehabilitation as provided in Rule 3-5.1(e) Rules of Discipline. I recommend that passage of the ethics portion of The Florida Bar examination shall constitute rehabilitation.

I have considered the following aggravating factors in this case:

- (1) Selfish motive
- (2) Vulnerability of victim
- (3) Substantial experience in the practice of law.

I have considered the following mitigating factors:

- (1) Absence of a prior disciplinary record

(2) Timely good-faith effort to make restitution or to rectify consequences of misconduct

(3) Remorse

(4) Full and free disclosure to disciplinary board and cooperative attitude toward proceedings

(5) Absence of intent to deprive the victim of property

(6) Absence of intent to deceive the victim.

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: Unknown

Date Admitted to Bar: Approximately 1974

Prior disciplinary convictions: None

Other personal data: Unknown

VI. Statement of Costs and Manner in Which Cost Should be

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

Administrative costs, Rule 3-7.6	
(k)(1)(5)	\$ 500.00
Court reporter fees and transcripts	1,193.30
Bar counsel travel expenses	129.30
Witness expenses	58.89
Investigator expenses	<u>146.04</u>
TOTAL ITEMIZED COSTS	\$ 2,027.53

It is apparent that other costs have been or may be incurred. It is recommended that all such costs and expenses together with the foregoing itemized costs be charged to the Respondent.

Dated this 12th day of September, 1991.

Francis D. Smith
Referee

Certificate of Service

I hereby certify that a copy of the above report of referee has been served on John V. McCarthy, Bar Counsel, The Florida Bar, 640 Apalachee Parkway, Tallahassee, Florida 32399-2300; and Martin L. Black, Attorney at Law, 505 East Duval Street, Suite D, DeSoto Plaza, Lake City, Florida 32055-4073, this 12th day of September, 1991.

John V. McCarthy