

78 001

**FILED**

SID J. WHITE

DEC 30 1991

CLERK, SUPREME COURT.

By [Signature]  
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA  
(Before A Referee)

THE FLORIDA BAR,

Supreme Court  
Case No. 78,001

Complainant,

Fla. Bar File  
No. 89-71,622(11E)

v.

MICHAEL I. ROSE,

Respondent.

\_\_\_\_\_ /

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

I was appointed referee in this case on June 5, 1991. There were **two** hearings, *to wit*: On August 6, 1991 and on November 18, 1991. The Respondent waived venue and agreed to have these proceedings in Broward County rather than Dade County. (Transcript of August 6, 1991 at pages 26-27).

The following attorneys **appeared as** counsel for the parties:

- For **The** Florida Bar - Paul A. Gross, Esq. ✓
- For **The** Respondent - James F. Pollack, Esq.
- Michael I. Rose, Esq.

11. FINDINGS OF FACTS:

Most of the facts in this case were agreed to and are shown in the stipulation, which is part of the record. A synopsis of the facts is as follows:

Michael Rose, the Respondent, and Janice Revitz were married during 1974. They were divorced during June 1984. Both parties

**are** members of The Florida Bar. Ryan Evan **Rose** and Darren A. Rose are minor children of Michael and Janice. More than two years after the divorce, the Respondent sold 2,000 shares of common stock, issued by Lance, Inc., for approximately \$77,500.00. Respondent used these funds for his personal use. **The** stock certificates were in the name of Janice Revitz, Custodian for Darren **A.** Rose and Ryan Evan Rose, Uniform Gift For Minor Act, Florida.

After the divorce, Respondent signed his ex-wife's name to client agreement forms and to the stock certificates. This was done without the ex-wife's authority. (See Stipulation).

During September 1986, Shearson Lehman Brothers issued two **checks** for \$38,750.00 each, in return for the Lance Stock. One check was payable to the order of Janice Revitz Rose, Custodian for Darren **A. Rose.** The other check was payable to the order of Janice Revitz **Rose,** Custodian for Ryan Evan Rose. The Respondent signed the name Janic Revitz Rose on **the** back of each check.

Janice Revitz testified she did not authorize Respondent to sign her name to the checks. Also, Respondent, by Stipulation, agree\$with this.

Respondent contends that he did not need his ex-wife's authority to sign her name to the aforementioned documents. Respondent stated that he believed the stock was purchased **as** a Totten Trust or a revokable trust. Respondent stated he did not know the Uniform Gift For Minors Act created an irrevokable trust,

Also, Respondent testified the money used to purchase the Lance Stock was from his funds. The ex-wife stated she did not know where the funds came from. All Funds, with interest, were refunded

to the ex-wife, as custodian for the children by Shearon Lehman

*as a result of an arbitration award. Respondent withdrew the arbitration but*

It is without question that Janice Revitz did not give any consent to signing her name at the time of the sale or to the sale of the stock. This Referee also finds at the time of the sale, that the wife had no knowledge of the existence of the stock in her name.

*Jan*  
*he sought the proceeds for his own account*

The Respondent contends, number one, that he didn't know that a gift under the Uniform Gifts to Minors Act, with his wife as custodian, divested him of any interest in the corpus of the gift, and number two, that his wife had consented to signing her name to other accounts and that he presumed this consent remained in effect, almost two and a half years after the divorce.

In his opening, Respondent contended that the purpose of putting the stock in the children's names was not to get the tax benefit, because he paid the taxes. However, examination of the tax returns shows no evidence of payment of taxes by the Respondent on this property until 1985, which was after the divorce.

**The** Referee finds that the Respondent knew or should have known that **he** had no right to sign his wife's name to the account. He knew or should have known that he had no right to utilize the money in the custodial account for his personal benefit.

111. RECOMMENDATION AS TO WHETHER RESPONDENT SHOULD BE FOUND GUILTY OR NOT GUILTY:

I Recommend that the Respondent be found Guilty of violating the Code of Professional Responsibility - Disciplinary Rule 1-102(A)(4) (Conduct involving Misrepresentation). I recommend that Respondent be found Not Guilty of Disciplinary Rule 1-102(A)(5) of the Code of Professional Responsibility and Florida Bar Integration Rule 11.02(3).

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

Considering the particular circumstances of this case; that it has Limited effect on Respondent's fitness to practice law, I recommend that the Respondent be suspended from practicing law for Thirty (30) Days.

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD.

**Age:** 46

Date Admitted to Bar: November 19, 1971

Prior Discipline: The Respondent has no prior disciplinary record.

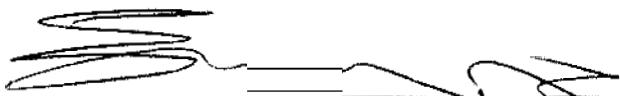
VI. STATEMENT OF COSTS:

This Referee finds the costs amounting to \$2,090.55 and enumerated in the attached CERTIFICATE CONCERNING COSTS submitted to this Court by The Florida Bar and through its counsel, Paul A. Gross, Esq., were reasonably incurred by The Florida Bar. It is

recommended that all such costs and expenses be charged to the Petitioner. It is further recommended that execution issue with interest at a rate of twelve percent (12%) per annum to accrue on all costs not paid within thirty (30) days of the Supreme Court's Final Order, unless time for payment is extended by the Board of Governors of The Florida Bar.

Dated this 24 day of December, 1991.

Respectfully submitted,



ESTELLA M. MORIARTY, Referee  
Broward County Courthouse  
201 S.E. 6th Street  
Room 427  
Ft. Lauderdale, Florida 33301  
(305) 357-7702

~~CERTIFICATE OF SERVICE~~

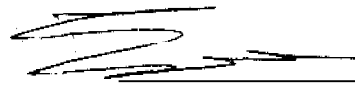
I HEREBY CERTIFY that on this 25 day of December 1991, copies of the above report were ~~mailed~~ *delivered* to the following lawyers:

Paul A. Gross, Bar Counsel  
The Florida Bar  
Suite M-100, Rivergate Plaza  
444 Brickell Avenue  
Miami, Florida 33131

John A. Boggs *by mail*  
Director of Lawyer Regulation  
The Florida Bar  
650 Apalachee Parkway  
Tallahassee, Florida 32399-2300

James F. Pollack, Co-Counsel for Respondent  
328 Minorca Avenue  
2nd Floor  
Coral Gables, Florida 33134

Michael I. Rose, Respondent  
and Co-Counsel  
1525 Museum Tower  
150 West Flagler Street  
Miami, Florida 33130



---

ESTELLA M. MORIARTY  
Referee