

FILED

SID J. WHITE

MAR 2 1992

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

v.

WILLIAM F. DANIEL,
Respondent.

Case No. 78,063

TFB File No. 91-00298-02

INITIAL 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 June 10, 1992, 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 initial Report constitute the record in this case and are forwarded to the Supreme Court of Florida.

On October 28, 1992, The Florida Bar filed a Motion to Deem Matters Admitted and Motion for Summary Judgment.

Pursuant to a Notice of Hearing in this matter, a hearing was held on the above-referenced motions on January 14, 1992.

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. Procedural Summary. The Florida Bar served Respondent with a copy of its Request for Admissions on June 10, 1991 by certified mail at Respondent's record Bar address. Respondent signed for service of said Request for Admissions on June 17, 1991. This service was pursuant to Rule 3-7.11(b), Rules of Procedure of The Florida Bar.

On October 28, 1991, The Florida Bar filed its Motion to Deem Matters Admitted and Motion for Summary Judgment. Service of these Motions was perfected upon Respondent by mailing a copy of said motions by certified mail to Respondent's record Bar address.

While Respondent failed to pick up the motions after three notices from the post office, I find he was given proper notice under the provisions of Rule 3-7.11(c), Rules of Procedure of The Florida Bar. Respondent did receive notice of the instant hearing and made no effort to determine the substance of the Bar's motions.

Respondent failed to file an answer to the Bar's Request for Admissions within the 45 days provided for under Rule 1.370(a),

Florida Rules of Civil Procedure. All matters for which an admission was requested are now deemed admitted.

C. Narrative Summary of Case. Based upon the matters deemed admitted in the Bar's Request for Admissions, the following facts are found to be proven:

On or about September 19, 1983, Respondent was retained by George G. and Margarete B. Miller (the Millers) to initiate foreclosure proceedings on their behalf concerning two mortgages given by Big Bend Housemovers, Inc. (Big Bend). Respondent requested and received a retainer fee of \$690.00 from the Millers to institute foreclosure proceedings. The mortgages held by the Millers related to two tracts of land purchased by Big Bend on or about December 3, 1982. On or about December 1, 1982, Big Bend executed a quit claim deed to Hassler Construction, Inc. (Hassler). The Millers were notified of the change of ownership by letter from Hassler on or about June 3, 1983.

On or about September 22, 1983, Respondent filed a complaint to foreclose the above referenced mortgages against Big Bend and Hassler. A final hearing was held on the foreclosure complaint on May 3, 1984. On June 11, 1984 a final judgment and default for foreclosure was entered by Circuit Judge Victor Cawthon against Big Bend and Hassler. The June 11, 1984 final judgment provided that unless sums due were not paid the property should be sold at public sale at 11:00 a.m. on July 11, 1984. Respondent failed to perfect the public sale ordered for July 11, 1984 after Big Bend and Hassler failed to pay the sums due on the mortgage. Respondent later filed a Motion for an Amended Final Judgment to obtain a new sale date on or about January 7, 1985.

On or about January 22, 1985, a final hearing was held on Respondent's Motion for Amended Final Judgment. On January 22, 1985 Respondent wrote the Millers advising them that the Court had granted a new public sale date for February 20, 1985, at 11:00 a.m. Respondent failed to take

the necessary steps to perfect the public sale set for February 20, 1985. After Respondent failed to perfect the public sale the Millers sought a title search on the mortgaged property from Premier Title and Abstract, Inc. (Premier). On or about March 22, 1985 the Millers were notified by Premier that subsequent to the original public sale date of July 11, 1984, there were four outstanding judgments against Hassler, an assignment of mortgage from Big Bend to Citizens Commercial Bank, two federal tax liens against Hassler and property taxes for 1984 were outstanding. Respondent failed to ascertain the existence of these liens prior to filing either the original complaint or the Motion for Amended Final Judgment. Respondent failed to name any of the outstanding lienholders in any of his pleadings in this matter.

The Millers sought the help of other counsel in an attempt to complete the foreclosure begun by Respondent. On June 2, 1985, Attorney W. Kirk Brown wrote Respondent on behalf of the Millers asking that he conclude the foreclosure proceedings. Further, Respondent failed to respond to the letter of Mr. W. Kirk Brown. Respondent failed to complete the foreclosure proceedings for which he was retained by the Millers. As of July 1990, the sale had not been perfected. Respondent never asked the court for permission to withdraw from this matter. Respondent failed to advise the Millers as to the consequences of not taking this property to public sale.

III. RECOMMENDATIONS AS TO GUILT.

I recommend that Respondent be found guilty of violating Rules 4-1.3 (a lawyer shall act with reasonable diligence and promptness in representing a client), 4-1.4(a) (a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information) and 4-3.2 (a lawyer shall make reasonable efforts to expedite

litigation consistent with the interests of the client), 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. The appropriate discipline will be determined at a later date, subsequent to a hearing as to appropriate discipline.

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: 64 years old

Date admitted to the Bar: 1956

Prior Discipline: None

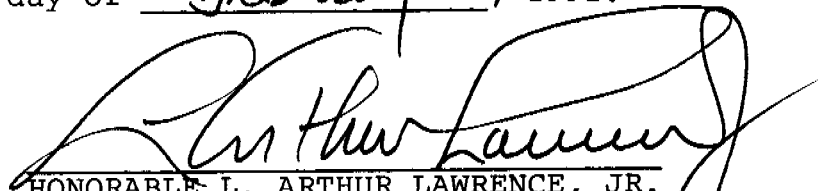
VI. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

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

1. Administrative Costs	\$500.00
2. Court Reporter's Fees	<u>115.63</u>
TOTAL	<u>\$615.63</u>

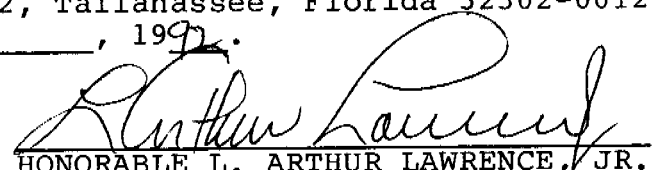
It is recommended that such costs be charged to Respondent and that interest at the statutory rate shall accrue and be payable beginning 30 days after the judgment in this case becomes final unless a waiver is granted by the Board of Governors of The Florida Bar.

Dated this 27th day of February, 1992.


 HONORABLE L. ARTHUR LAWRENCE, JR.
~~Clerk~~ Judge, Third Judicial Circuit
 Suwannee County Courthouse
 Live Oak, Florida 32060-3239

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 WILLIAM F. DANIEL, Respondent, at his record Bar address of 418 E. Virginia Street, Post Office Box 12, Tallahassee, Florida 32302-0012 on this 28th day of February, 1992.


 HONORABLE L. ARTHUR LAWRENCE, JR.