

FILED

SID J. WHITE

SEP 10 1991

CLERK, SUPREME COURT

By JC
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

Case No. 78589

TFB NO. 90-11,166(06D)

v.

JOSEPH R. MIELE,
Respondent.

_____ /

COMPLAINT

THE FLORIDA BAR, Complainant, files this Complaint against **JOSEPH R. MIELE**, Respondent, pursuant to Rule 3-3.2(a), Rules of Discipline, and alleges:

1. Respondent is a member of The Florida Bar.
2. The "Coronet 300" is an eleven (11) story building in downtown St. Petersburg, Florida.
3. In 1979, the Coronet Building was owned by Jack Y. Williams and Respondent as partners, wherein the building was operated as rental apartments.
4. In approximately 1979, the Coronet Building was converted to a condominium.
5. In approximately 1979, Mr. Jack Williams and Respondent devised a plan to sell floors three (3) through ten (10) to prospective purchasers who might derive federal income tax benefits from an inflated purchase price.

6. Except for the change in ownership to the purchasers of floors three (3) through ten (10), the building remained physically identical without any structural changes or additions.

7. In 1980, the Pinellas County Property Appraiser appraised the Coronet Building based upon the sales price figures and assessed the property owners on that basis alone.

8. **The** Coronet property owners, including Respondent discussed bringing legal action to oppose the significantly higher tax assessments.

9. Respondent agreed to represent the Coronet property owners in an action against the Pinellas County Property Appraiser and Tax Collector.

10. Respondent agreed to initiate litigation against the Pinellas County Property Appraiser and Tax Collector only upon being paid his legal retainer in advance.

11. Respondent agreed to reimburse the Coronet property owners for attorney **fees** recovered from the litigation **as** well as any unexpended costs.

12. In 1981, Respondent was paid four thousand dollars (\$4,000.00) by the Coronet property owners. The four thousand dollars (\$4,000.00) **paid** was comprised of three thousand four hundred dollars (\$3,400.00) in legal fees and a six hundred dollar (\$600.00) cost retainer.

13. Respondent filed an action styled Jack Y. Williams, et al. v. Ronald Schultz and O. Sanford Jasper, Pinellas County, Florida on behalf of the Coronet property owners for the tax year 1980.

14. Thereafter, ongoing litigation ensued for the overvaluation of the Coronet Building for the tax years **1981, 1982, 1983, 1984** and **1987**.

15. On October **12, 1983**, Respondent was paid an additional four thousand six hundred dollars (**\$4,600.00**) by the Coronet property owners. The four thousand six hundred dollars (**\$4,600.00**) paid was comprised of three thousand eight hundred dollars (\$3,800.00) in legal fees **and** a eight hundred dollar (\$800.00) cost retainer.

16. In **1984**, Respondent was paid three thousand five hundred dollars (\$3,500.00) in legal fees by the Coronet property owners.

17. The Coronet property owners paid Respondent three thousand two hundred forty-seven dollars (**\$3,247.00**) for services performed for the tax year **1987**. The three thousand two hundred and forty-seven dollars (**\$3,247.00**) was comprised of two thousand eight hundred dollars (\$2,800.00) in legal fees and a four hundred forty-seven dollar (**\$447.00**) cost retainer.

18. On June **9, 1989**, a **Stipulated** Final Judgment was entered in Francis Williams, et al. v. Ronald Schultz, et al. Case No.'s **83-11921-17** and **83-14754-17** (Consolidated), Pinellas County, Florida. The Stipulated Final Judgment declared the just value of certain units of the Coronet building for the tax years **1981** and **1984**. The Stipulated Final Judgment provided for attorneys' fees in **the** amount of four thousand five hundred dollars (\$4,500.00) for each year for **a** total of nine thousand

dollars (\$9,000.00) and costs in the amount of eight hundred dollars (\$800.00).

19. On June 5, 1989, a Stipulated Final Judgment was entered in James Williams, et al. v. Ronald Schultz, et al., Case NO. 83-14754-13, Pinellas County, Florida. The Stipulated Final Judgment declared the just value of certain units of the Coronet building for the tax years 1982 and 1983. The Stipulated Final Judgment provided for attorneys' fees in the amount of four thousand five hundred dollars (\$4,500.00) for each of the years, for a total of nine thousand dollars (\$9,000.00), and costs in the amount of eight hundred dollars (\$800.00), payable to Respondent.

20. On June 2, 1989, a Stipulated Final Judgment was entered in Jack Williams and Joseph Miele v. Ronald Schultz, et al., Case No. 87-18031-10, Pinellas County, Florida. The Stipulated Final Judgment declared the **just** value of certain units of the Coronet Building for the **tax** year 1987. The Stipulated Final Judgment provided attorneys' fees in the amount of nine hundred dollars (\$900.00) and costs in the amount of one hundred dollars (\$100.00), payable to Respondent.

21. On June 6, 1989, a Stipulated Final Judgment was entered in Dorothy Harbison v. Ronald Schultz and O. Sanford Jasper, Case No. 87-18032-19, in **the** Circuit Court for Pinellas County, Florida. The Stipulated Final Judgment declared the just value of certain units of the Coronet Building for the tax year 1987. The Stipulated Final Judgment provided attorneys' fees in

the amount of nine hundred dollars (\$900.00), and costs in the amount of one hundred (\$100.00), payable to Respondent.

22. On June 7, 1989, a Stipulated Final Judgment was entered in Ralph Sethness v. Ronald Schultz, et al., **Case No. 87-18033-18**, in the Circuit Court for Pinellas County, Florida. The Stipulated Final Judgment declared the just value of certain units of the Coronet Building for the tax year 1987. The Stipulated Final Judgment provided for attorneys' fees in the amount of nine hundred dollars (\$900.00), and costs in the amount of one hundred dollars (\$100.00), payable to Respondent.

23. On June 5, 1989, a Stipulated Final Judgment was entered in Robert Murphy v. Ronald Schultz et al., **Case No. 87-18034-17**, in the Circuit Court for Pinellas County, Florida. **The** Stipulated Final Judgment declared the just value of certain units of the Coronet Building for the tax year 1987. The Stipulated **Final** Judgment provided for attorneys' fees in the amount of nine hundred dollars (\$900.00), and costs in the amount of one hundred dollars (\$100.00), payable to Respondent.

24. On June 5, 1989, a Stipulated Final Judgment was entered in Lewis M. Crowe and Beverly Crowe v. Ronald Schultz, et al., **Case No. 87-18035-17**, in the Circuit Court for Pinellas County, Florida. The Stipulated Final Judgment declared the just value of certain units of the Coronet Building for the tax year 1987. The Stipulated Final Judgment provided for attorneys' fees in the amount of nine hundred dollars (\$900.00), and costs in the amount of one hundred dollars (\$100.00), payable to Respondent.

25. The Coronet owners paid Respondent fifteen thousand three hundred forty-seven dollars (\$15,347.00) as referenced in paragraphs 12, 15, 16 and 17 above.

26. In addition to the fifteen thousand three hundred forty-seven dollars (\$15,347.00) the Coronet owners paid additional legal fees to other legal counsel regarding collateral matters related to the above-mentioned litigation.

27. In about June, 1989, the Pinellas County Tax Collector's office sent the Coronet owners tax refund checks to Respondent for disbursement.

28. In or about August, 1989, Respondent disbursed the tax refund checks to several of the Coronet owners.

29. Respondent did not disburse or deliver the tax refund checks to three (3) of the Coronet owners and or heirs.

30. On or about August 17, 1989, Respondent hand delivered the tax refund check to James Williams.

31. Upon receipt of the tax refund check, Mr. Williams specifically inquired of Respondent as to the status of the attorney's fees and costs reimbursement issue.

32. Respondent advised Mr. Williams that the issue regarding reimbursement of attorneys' fees and costs was still pending, and that it was unlikely that the Coronet owners would be reimbursed at any future date.

33. Respondent misrepresented the status of the attorneys' fees and cost reimbursement status at a time wherein he had already been awarded fees and costs.

34. In fact, Respondent negotiated check No. 0827, dated June 14, 1989, for fourteen thousand eight hundred dollars (\$14,800.00) on June 15, 1989. Respondent negotiated check No. 0828 dated June 14, 1989, for nine thousand eight hundred dollars (\$9,800.00) on June 15, 1989. Respondent was reimbursed a total of twenty-four thousand six hundred dollars (\$24,600.00) for fees and costs.

35. On **or** about January 21, 1990, Mr. James Williams contacted the Pinellas County Property Appraiser's office and learned that Respondent had received attorneys' fees and costs reimbursement checks over six (6) months before.

36. On or about January 23, 1990, Respondent corresponded with the Coronet owners and requested copies of any **checks** paid for fees and costs.

37. On or about January 26, 1990, Mr. James Williams sent **a** letter to Respondent requesting reimbursement.

38. On **or** about January 26, 1990, Mr. Francis Williams sent a letter to Respondent requesting reimbursement.

39. On or about January 30, 1990, Mr. Lewis M. Crowe and Beverly Crowe sent **a** letter to Respondent requesting reimbursement.

40. On or about January 31, 1990, Mr. Lewis **E.** Crowe and David Crowe sent a letter to Respondent requesting reimbursement.

41. On or **about** February 2, 1990, Mr. Robert **F.** Murphy sent a letter to Respondent requesting reimbursement.

42. As of February 13, 1990, the Coronet owners received no **response** to their letters and filed a complaint with The Florida Bar.

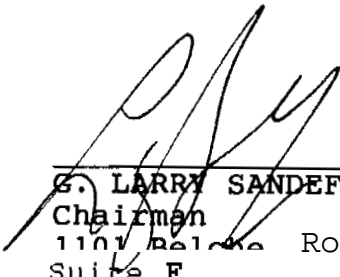
43. On or about February 13, 1991, the Sixth Judicial Circuit Grievance Committee "D" found probable cause to proceed with further disciplinary action in this matter.

44. Based upon the foregoing, Respondent has violated the following Rules of Professional Conduct regarding conduct subsequent to January 1, 1987: Rule 4-1.3 - A lawyer shall act with reasonable diligence and promptness in representing a client; Rule 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; Rule 4-1.4(b) - A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; Rule 4-1.5 - An attorney shall not collect an illegal, fraudulent or clearly excessive fee; Rule 4-1.15(a) - A lawyer shall hold in trust, separate from the lawyer's own property, funds and property of client's that are in a lawyer's possession in connection with a representation; Rule 4-1.15(b) - Upon receiving funds or other property in which a client has an interest, a lawyer shall promptly notify the client; Rule 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; Rule 4-1.15(d) - A lawyer shall comply with The Florida Bar Rules Regulating Trust Accounts; Rule

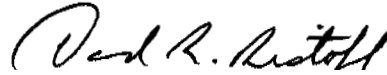
4-8.4(b) - A lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects (Integration Rule **11.02(3)(a)** and (b), Conduct prior to January 1, 1987); Rule 4-8.4(c) - A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation; Rule 5-1.1 - Money or other property entrusted to an attorney for a specific purpose is held in trust and must be applied only to that purpose (Integration Rule 11.02(4), conduct prior to January 1, 1987); Rule **5-1.1(b)** - A member of **The** Florida Bar shall preserve or cause to be preserved the records of all bank accounts or other records pertaining to the funds or property of a client for a period not less than six **years** (Integration Rule 11.02(4)(b), conduct prior to January 1, 1987); Rule 5-1.1(c) - Minimum trust accounting records shall be maintained and minimum trust accounting procedures must be followed by all attorneys practicing in Florida who receive or disburse trust money or property; Rules **5-1.2(b)(2) (3) (4) (5) (6) & (7)** - Minimum trust accounting records **as** outlined in these rules should **be** maintained (Disciplinary Rule **9-102(a)**, conduct prior to January 1, 1987); and Rule 5-1.2(c)(1) (2) (3) & (4) - Minimum trust accounting procedures as outlined in these rules should be followed.

WHEREFORE, The Florida Bar respectfully requests that the Respondent be appropriately disciplined.

Respectfully submitted,



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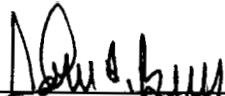


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Complaint was furnished to William Slicker, at NCNB Building, Suite 516, 501 First Avenue North, St. Petersburg, Florida 33701, by Regular U.S. Mail, and to David R. Ristoff, Branch Staff Counsel, The Florida Bar, Suite C-49, Tampa Airport, Marriott Hotel, Tampa, Florida 33607, by regular U.S. Mail this

9th day of _____, 1991.



JOHN T. BERRY
Staff Counsel