

FILED

SID J. WHITE

APR 15 1992

CLERK, SUPREME COURT

By *[Signature]*
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

The Florida Bar,
Complainant,

v.

CASE NO. 78,593

ISRAEL PEREZ, JR.
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:

March 18, 1992

The following attorneys appeared as counsel for the parties:

For The Florida Bar PAUL A. GROSS, ESQ.
For The Respondent ISRAEL PEREZ, JR., ESQ.

The Referee received the following evidence:

1. Check No. 073965 in the amount of \$728 made payable to P. S. **Medical** Service and Alina Diaz
2. Check No, 073968 in the amount of \$104 made payable to Manual A. Sala, M.D. and Alina Diaz
3. Check No. 073966 in the amount of \$212 made payable to Miami X-Ray Medical Center and Alina Diaz
4. Composite statement of Julio Diaz
5. Stipulation between Paul A. Gross **and** Israel Perez
6. Stipulation Concerning Staff Auditor
7. Stipulation Concerning Grievance Committee Transcript
8. Grievance Committee Transcript
9. Affidavit of **Alina** Diaz

The Referee also heard the testimony of Israel Perez.

I make the following specific findings of fact:

The evidence revealed that the Respondent loaned money to Julio Diaz, a former client, and friend of the Respondent. Julio Diaz was the President of P.S. Medical Service, which provided services to Alina Diaz, a client of the Respondent.

The Respondent entrusted Julio Diaz with checks made payable to his client and medical providers under the apparent misapprehension that Diaz would obtain the necessary endorsements for Respondent to deposit the checks and remit payment to the providers in cash. The Respondent then deposited the checks into his Trust Account and subsequently transferred the funds to his operating account reducing the debt owed to him by Diaz.

The evidence established that the Respondent, Israel Perez, failed to follow rules, regulations and procedures concerning Trust Accounts and improperly relied upon persons unrelated to his law firm in the handling of checks payable to clients. The Respondent erred in indiscriminately exchanging such funds for the repayment of personal loans owed by Diaz to him. As admitted by the Respondent, his actions and lack of diligence in maintaining his accounts and records constituted gross negligence. However, I cannot find on the evidence presented that the Respondent acted in an intentional manner or that he intended to defraud either his client or the health care providers. His conduct reflects ignorance and gross negligence in the extreme.

11. 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:

COUNT I

Respondent, Israel Perez, has admitted the following:

1. He submitted claims to Florida Insurance Guaranty Association, Inc. for treatment rendered to Alina Diaz by P. S. Medical Service.

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2. The claims **for** services rendered by P.S. Medical Service to Alina Diaz indicate treatment for more than one occasion.
3. On or about August 14, 1985, check no. 073965 was issued by Florida Insurance Guaranty Association, Inc., and made payable to P. S. Medical Service and Alina Diaz in the amount of \$728.
4. Check number 073965 was mailed to Respondent's office by the Florida Insurance Guaranty Association, Inc.
5. Check number 073965 bears a signature purporting to be that of Alina Diaz.
6. Check number 073965 bears a signature purporting to be that of Julio Diaz, President of P.S. Medical Service.
7. On or about August 30, 1985, Respondent deposited check number 073965 made payable to P. S. Medical Service and Alina Diaz into his trust account.
8. Respondent did not remit the funds to Alina Diaz.

Based on the evidence, I further find that:

1. Alina Diaz neither signed **nor** endorsed check number 073965.
2. The Respondent did not remit the funds to P. S. Medical Services.
3. The Respondent failed to notify Alina Diaz of his receipt of the monies.
4. The Respondent used client funds for purposes other than those **for** which they were entrusted, but not with the knowledge that those funds had not otherwise been paid to the appropriate party.

5. Respondent acted under an improper assumption that the monies had been paid to the proper party and, therefore, did not act with the intent to defraud.
6. The evidence fails to establish that Julio Diaz, as President of P.S. Medical Service, did not endorse this check. In fact, the Respondent's testimony leads one to believe that it is more than likely that Diaz did endorse the check.

COUNT II

The Respondent has admitted the following:

1. Be submitted claims to Florida Insurance Guaranty Association, Inc., for treatment rendered Alina Diaz by Manual A. Sala, M.D.
2. On or about August 14, 1985, check number 073968 **was** issued by the Florida Insurance Guaranty Association, Inc., and made payable to Manual A. Sala, M.D. and Alina Diaz in the amount of **\$104**.
3. Check number **073968** bears a signature purporting to be that of Alina Diaz.
4. Check number 073968 bears a signature purporting to be that of Manual A. Sala, M.D.
5. On or about August 30, 1985, Respondent deposited check number 073968 made payable to Manual A. Sala, M.D. and Alina Diaz into his trust account.

I further find on the evidence presented that:

1. Alina Diaz received medical treatment from Manual A. Sala, M.D.
2. Alina Diaz neither signed nor endorsed check number 073968.

3. Manual A. Sala, M.D., neither signed nor endorsed check number 073968.
4. Respondent did not remit monies to Manual A. Sala, M.D.
5. Respondent failed to notify Alina Diaz of his receipt of the monies.
6. Respondent used client funds for purposes other than those for which they were entrusted, but not with the knowledge that the funds had not otherwise been paid to the appropriate party.
7. Respondent acted under an improper assumption that the monies had been paid to the proper party and, therefore, did not act with the intent to defraud.

COUNT III

The Respondent admits:

1. Alina Diaz sought treatment at Miami X-Ray Medical Center for injuries sustained in the above-referenced accident.
2. Respondent submitted claims to the Florida Insurance Guaranty Association, Inc., for treatment rendered Alina Diaz by Miami X-Ray Medical Center.
3. On or about August 14, 1985, check number 073966 was issued by Florida Insurance Guaranty Association, Inc., and made payable to Miami X-Ray Medical Center and Alina Diaz in the amount of \$212.
4. Check number **073966** was mailed to Respondent's office by the Florida Insurance Guaranty Association, Inc.

5. Check number 073966 bears a signature purporting to be that of Alina Diaz.
6. Check number 073966 bears a signature purporting to be that of Alberto Gutierrez, Director of Miami X-Ray Medical Center.
7. On or about August 30, 1985, Respondent deposited check number 073966 made payable to Miami X-Ray Medical Center and Alina Diaz into his trust account.
8. Respondent did not remit the aforesaid funds to Alina Diaz.

I further find that:

1. Alina Diaz neither signed nor endorsed check number 073966.
2. The evidence did not establish that Alberto Gutierrez, Director of Miami X-Ray Medical Center did not sign or endorse check number 073966.
3. Respondent did not remit the aforesaid funds to Miami X-Ray Medical Center.
4. Respondent failed to notify Alina Diaz of his receipt of the monies.
5. Respondent used client funds for purposes other than those for which they were entrusted, but not with the knowledge that those funds had not otherwise been paid to the appropriate party.
6. Respondent acted under an improper assumption that the monies had been paid to the proper party and, therefore, did not act with the intent to defraud.

COUNT IV

The Respondent admits the following:

1. During the period on or about July 15, 1985, to April 30, 1990, he maintained a trust account at Dadeland National Bank, Miami, Florida, account no, 10162530600.
2. An audit of his trust account was conducted by Carlos J. Ruga, Branch Staff Auditor for the Florida Bar.
3. Mr. Ruga's audit of his trust account covered the period of July 15, 1985, through April 30, 1990.
4. Respondent failed to maintain original or duplicate deposit slips and, in the case of currency or coin, an additional cash receipts book, clearly identifying the date and source of all funds received and the client or matter for which the funds were received.
5. Respondent failed to maintain a separate cash receipts and disbursements journal, including columns for receipts, disbursements, transfers and the account balance and containing at least: the identification of the client or matter for which the funds were received, disbursed or transferred; the date on which all trust funds were received, disbursed or transferred; the check number for all disbursements; and the reason for which all trust funds were received, disbursed or transferred.
6. Respondent failed to maintain a separate file or ledger with an individual card or page for each client or matter showing all individual receipts, disbursements or transfers and any unexpended balance,

and containing the identification of the client or matter for which trust funds were received, disbursed, or transferred; the date on which all trust funds were received, disbursed, or transferred; the check number for all disbursements; and the reason for which all trust funds were received, disbursed or transferred.

7. Respondent failed to maintain all bank or savings and loan association statements for all trust accounts.

I further find that:

1. Respondent failed to maintain and preserve the minimum required trust accounting records, but that his failure was based on ignorance and was not intentional,
2. Respondent failed to maintain documentary support for all disbursements and transfers from the trust account, but that his failure was based on ignorance and was not intentional.
3. Respondent failed to follow the minimum trust accounting procedures, but that his failure was based on ignorance and was not intentional.
4. Respondent failed to prepare and preserve trust account balance reconciliations, but that his failure was based on ignorance and was not intentional.
5. Respondent failed to issue written authorization to his bank permitting the bank to notify The Florida Bar of the occurrence of any trust account check dishonored, but there was no evidence that any such check was, in fact, dishonored.

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111. Recommendation as to Whether or Not the Respondent Should Be Found Guilty: As to each count of the Complaint, I make the following recommendations as to guilt or innocence:

Count I

I recommend that the respondent be found not guilty of violating Disciplinary Rule 1-102(a)(4) and Disciplinary Rule 9-102(b)(4).

I recommend that the respondent be found guilty of violating Disciplinary Rule 1-102(a)(6), Disciplinary Rule 9-102(b)(1), and Florida Bar Integration Rule, Article XI, Rule 11.02(4).

Count II

I recommend that the respondent be found not guilty of violating Disciplinary Rule 1-102(a)(4) and Disciplinary Rule 9-102(b)(4).

I recommend that the respondent be found guilty of violating Disciplinary Rule 1-102(a)(6), Disciplinary Rule 9-102(b)(1) and Florida Bar Integration Rule, Article XI, Rule 11.02(4).

Count III

I recommend that the respondent be found not guilty of violating Disciplinary Rule 1-102(a)(4) and Disciplinary Rule 9-102(b)(4).

I recommend that the respondent be found guilty of violating Disciplinary Rule 1-102(a)(6), and Disciplinary Rule 9-102(b)(1), and Florida Bar Integration Rule, Article XI, Rule 11.02(4).

Count IV

I recommend that the respondent be found guilty of violating Florida Bar Integration Rule, Article XI, Rule 11.02(4)(b) and (c).

IV. Recommendation as to Disciplinary Measures to be Applied:

Under Florida's Standards For Imposing Lawyer Sanctions, the recommended penalty is a suspension for a fixed period of time. However, there are mitigating factors, which when considered, suggest a reduction in the penalty imposed.

Those factors are:

1. The Respondent has not had any prior or subsequent disciplinary record;
2. There was no proof of an intention to defraud;
3. The Respondent made full and free disclosure to the Bar and appears to have been cooperative throughout the proceedings;
4. At the time of the infraction, the Respondent was inexperienced in the private practice of law having entered the private sector during the year of the infraction;
5. The infraction occurred eight years ago, the Respondent did not contribute to this delay, but the delay appears to have prejudiced the Respondent as the significant witnesses against him were not present to be cross-examined, including Julio Diaz.
6. The Respondent appeared remorseful and willing to correct any deficiencies in his practice.

For these reasons, I recommend a reduction in the penalty to a Public Reprimand. It is recommended that the Respondent successfully complete a course(s) in Trust Accounting Procedures and be placed on probation for two years. It is further recommended that the Respondent make restitution to Alina Diaz's mother for the \$104 paid by her to Dr. Sala, plus any accrued interest.

V. Personal History and Past Disciplinary Record: After finding the Respondent 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: 35
Date Admitted to Bar: 1982
Prior Disciplinary Record: None

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

(Pursuant to Rule 3-7.(k) (5) of the Rules of Discipline) \$ 500.00

Court Reporter Costs

Final Hearing 3/18/92
Attendance & Transcript \$ 419.70
(Personal Touch Reporting)

Grievance Committee Hearing
5/30/91 \$ 255.90
Attendance & Transcript
(Personal Touch Reporting)

Investigator Costs

(James B. Crowley) \$ 498.00
27.7 hours at \$18.00 per hour
Expenses \$ 140.00

Auditor Costs

(Carlos S. Ruga, C.P.A.) \$ 676.80

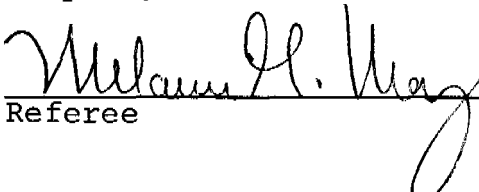
Travel Expenses by
Bar Counsel

\$ 24.64

TOTAL \$2, 515.64

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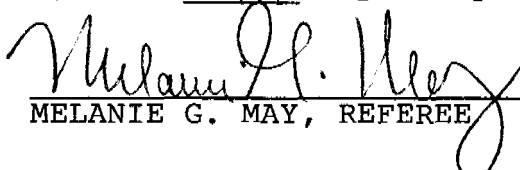
Dated this 13th day of April, 1992.



Referee

Certificate of Service

I hereby certify that a copy of the above Report of Referee has been served on Paul A. Gross, Esq., Bar Counsel at The Florida Bar, 444 Brickell Avenue, Suite M-100, Miami, Florida 33131, Israel Perez, Jr., Respondent, P. O. Box 558403, Miami, Florida 33255 and John A. Boggs, Director of Lawyer Regulation, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, this 13th day of April, 1992.



MELANIE G. MAY, REFEREE