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SEP 23 1993

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

**IN THE SUPREME COURT OF FLORIDA
(Before a Referee)**

THE FLORIDA BAR,

Complainant,

v.

**CASE NO: 78, 969
TFB No. 91-11, 571**

CHARLES B. CORCES,

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, hearings were held on the following dates:

March 4, 1992
June 24, 1992
August 10, 1992
September 11, 1992
November 5, 1992
March 3, 1993
April 22, 1993
June 24, 1993

The following attorneys appeared as counsel for the parties:

For the Florida Bar:
Thomas E. Deberg, Esquire

For the Respondent:
Anthony Gonzalez, Esquire

II. FINDINGS OF FACT AS TO EACH ITEM OF MISCONDUCT OF WHICH THE RESPONDENT IS CHARGED:

The Respondent, Charles B. Corces, has only contested those violations alleged in paragraphs five (5) through eight (8) of the Bar's Amended Complaint. In so doing, the Respondent has conceded that the Bar could prove the underlying factual allegations for all other trust accounting violations complained of. The Respondent should be found guilty of all such uncontested violations, and as Referee I will hereinafter address only the contested violations.

Certain facts regarding these contested violations are not in dispute. The Respondent directed his bank, through a debit authorization memo of April 29, 1988, to debit a client trust account for a certain sum and to issue two checks from that sum to pay the Respondent's personal debts due and owing at two other banks. On that date the Respondent was not entitled to any monies from this trust account, having withdrawn the last attorney's fee due him (a percentage of monies collected) eight days earlier. It is uncontroverted that this deficit was later remedied and all sums reimbursed by the Respondent prior to the Bar audit and without any complaint from or loss to the client.

The controversy on this issue centers upon whether this action was negligent error or an intentional act. For the reasons hereinafter recited, I find that this was an intentional act on the part of the Respondent and that he should be found guilty of the violations alleged in Paragraphs five (5) through eight (8) of this Bar's Amended Complaint.

The Respondent's Office Manager/Bookkeeper, Ms. Akonom, testified that the misappropriation of these sums was due to her clerical error. However, her initial testimony was that such error was simply caused by her "misreading" of the client's balance as the attorney's fee due. This testimony was impeached by the fact that on the day in question the ledger card did not reflect a sufficient sum in the client's balance to cover the debit authorization memo. In other words, even had she "misread" the ledger card by transposing the client's balance for the recently zero balanced attorney's fee due (which zero balancing she

herself had done the week before), there would still have been insufficient sums available to cover the debit authorization memo. Thus, there was no such figure available for her to "misread". In subsequent testimony (at a later hearing) Ms. Akonom testified that she must have used not only the ledger card in "misreading" the attorneys fee, but also the percentage available from an undeposited check which she then had in hand. She testified that somehow she must have erroneously totaled these sums together to cover the debit authorization memo.

This Referee finds it incredulous that this obviously competent Office Manager/Bookkeeper could misread the zero balance she herself had recently placed on the ledger card, while at the same time doing the mental mathematics necessary to arrive at an adequate balance. But, even if this testimony were credible (and I find that it is not), since the check was yet undeposited, the debit authorization memo would necessitate the immediate misuse of at least some client monies for some period of time prior to the deposit being made and the check clearing. (And it is immaterial that this check would probably have been deposited and cleared before the checks written to pay the Respondent's personal debts would have cleared. The conversion would have occurred at the time the debit authorization memo was entered, for that is when the funds would have been misappropriated, not when the later checks drawn on that misappropriation were actually paid by the bank.) This incredible defense, even if it were believable, is really no defense at all.

Other factors surrounding this transaction confirm the finding that this was an intentional act of the Respondent and not a clerical error of his Office Manager/Bookkeeper. No debit memo was ever recorded on the client's ledger card, despite the testimony of Ms. Akonom that she would have done so as soon as the debit memo was received. No deficit was ever noted on the ledger card or in the trust account, so there exists no record to clearly reflect the actual reconciliation by the later use of attorney's fees due to reimburse the client's balance. No office memo or letter or ledger entry or other writing (either inner-office, or to the client, or to the Bar) ever contemporaneously even acknowledges this shortage, much less addresses the steps taken to rectify it. This is not how clerical errors are addressed

under any accounting system or bookkeeping practice. This is, however, how misappropriated funds are surreptitiously restored.

In carefully examining the numerous exhibits involving the various bank transactions and the client's trust account records, the conclusion is inescapable: This was an intentional act on the part of the Respondent and not a clerical error on the part of his Office Manager/Bookkeeper.

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

Combining those violations alleged which the Respondent has conceded to, together with the violations alleged in paragraphs five (5) through eight (8) which I have found to be intentional violations on the part of the Respondent, I recommend that the Respondent be found guilty as charged in all particulars of the Bar's Amended Complaint.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

I recommend that the Respondent be suspended for a period of one (1) year. This recommendation is based upon the following factors: There was no client complaint in this case nor loss to the client. All funds involved were fully restored prior to the unrelated bar audit revealing the anomaly in trust accounting. Also, a detailed audit of the Respondent's trust records indicates that this is an isolated incident, brought to light only long after the client had been made whole. While such action on the part of the Respondent is inexcusable and worthy of suspension, disbarment does not appear warranted.

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD:

Following the finding of guilt and prior to recommending discipline pursuant to Rule 3-7.6(k), a separate hearing was held and amongst the other testimony and evidence presented I considered the following personal history and prior disciplinary record of the Respondent: The Respondent is 38 years old and was admitted to the Bar on July 3, 1980. The Respondent has previously received a private reprimand in

1986 and a public reprimand in 1990 (Case No. 75,934), each of which dealt with a violation of Rule 4-1.4(a) of the Rules of Professional Conduct (Communication: a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information). The Respondent has no history of violations such as are involved in the instant case, nor did the Bar audit reveal other similar violations.

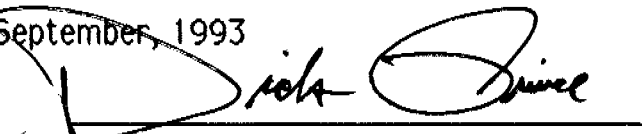
VI. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED:

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

Administrative Costs	\$500.00
Staff Auditor Expenses (5/6/91)	\$3,429.76
Assistant Staff Counsel Expenses (6/13/92)	\$6.77
Court Reporting Costs (6/13/92)	\$75.00
Court Reporting Costs (6/24/92)	\$50.00
Staff Auditor Expenses (7/13/92)	\$6.61
Staff Auditor Expenses (7/24/92)	\$7.11
Assistant Staff Counsel Expenses (7/24/92)	\$5.61
Staff Auditor Expenses (9/2/92)	\$542.53
Court Reporting Costs (3/3/93)	\$80.00
Court Reporting Transcription Costs (3/3/93)	\$324.75
Court Reporting Costs (6/24/93)	<u>\$619.75</u>
	\$5,647.89

It is apparent that other costs have been or may be incurred in this matter. It is recommended that all such costs and expenses together with the foregoing itemized costs be charged to Respondent, and that interest at the statutory rate shall accrue and be payable beginning thirty (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 24th day of September, 1993



DICK PRINCE, REFEREE
County Judge

Copies furnished to:

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Charles B. Corces, 4314 Gainsborough Court, Tampa, Fl 33624

Anthony F. Gonzalez, Attorney for Respondent, 701 N. Franklin St., Tampa, Fl 33602

Sid J. White, Clerk, Supreme Court of Florida, Office of the Clerk, Tallahassee, Fl 32399-1927