IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

HARRY S. EBERHART,

Respondent.

Case No. 79,649
TFB File No. 92-00753-02

REPORT OF THE REFEREE

I. SUMMARY OF PROCEEDINGS

I conducted disciplinary proceedings in this case as directed by the order of the Court. The procedural history of the case is as follows:

On April 6, 1992, the Bar filed a complaint against the respondent alleging that he had violated Rule 4-4.1(a) (in the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person), Rule 4-8.4(a) (a lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the action of another), and Rule 4-8.4 (c) (a) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation). At the time the complaint was served, the Bar also served the respondent with requests for admissions. Initially, there was no response to the complaint or the requests for admissions.

On June 5, 1992, after the expiration of the time for service of a response to the requests for admissions, the Bar filed a motion to deem matters admitted and a motion for a summary judgment based on the admissions. Thereafter on September 19, 1992, the respondent filed an answer to the complaint, a response to the request for admissions and a statement in mitigation. A hearing was held on the Bar's motions on September 23, 1992. Counsel for the Bar appeared at the hearing and the respondent appeared in proper person by telephone. On October 6, 1992, the motion to deem matters admitted and the motion for summary judgment were granted.

The final hearing was held in on November 3, 1992. Again, counsel for the Bar appeared in person and the respondent appeared in proper person by telephone. During the hearing, the parties presented testimony, exhibits, and arguments.

All of the pleadings, exhibits received in evidence, and this report constitute the record in this case and are forwarded to the Supreme Court of Florida.

The appearances of record were:

For the Florida Bar: Alisa Smith, Esq.
For the Respondent: Harry S. Eberhart, in proper person.

II. FINDINGS OF FACT

After consideration of the pleadings and evidence I find:

A. The respondent is a member of the Florida Bar and has been a member continuously since 1981. All of the events leading to the disciplinary action in this case occurred after 1981.

B. The respondent was admitted to the Bar of the State of Connecticut in 1980.

C. On April 19, 1991, the Connecticut Superior Court in the Judicial District of New Haven found that the respondent had violated Rules 4.1 and 8.4(c), of the Rules of Professional Conduct. Based on this finding, the Court suspended the respondent from the practice of law in Connecticut. The suspension resulted from the following events:

1. On May 23, 1989, the respondent represented Joseph J. Teal, the seller in a real estate transaction. The mortgagee, Bates Financial Corporation, was represented in the transaction by Attorney John F. Mezzanotte.

2. The subject property was encumbered by a mortgage securing a note from Joseph Teal and Steven Kraus to Attorney Richard Quinlan in the amount of $8,560.00. Attorney Mezzanotte requested a release of this mortgage from the respondent at the closing on May 23, 1989. The respondent told Attorney Mezzanotte that he did not have a release but would provide one forthwith.

3. Prior to the closing, Attorney Quinlan informed the respondent that he would release the lien when payment was received in full. At the time of closing, there was no arrangement for Attorney Quinlan's lien to be paid in full. However, based on the respondent's representation that he would provide a release, Attorney Mezzanotte allowed the closing to take place. The Respondent never supplied the release.

4. On July 13, 1989, Attorney Quinlan notified Mr. Teal, Attorney Mezzanotte, and the respondent that the note was past due and that he would begin foreclosure proceedings on July 21, 1989 if the note was not paid.

5. Attorney Mezzanotte paid Attorney Quinlan $8,560.00 from his personal funds on October 19, 1989 and received an assignment of the mortgage and note. Attorney Mezzanotte has not been compensated for his expense.

D. On July 26, 1991, the respondent resigned as a member of the Bar of the State of Connecticut. The resignation was tendered under the following circumstances:

1. There were four disciplinary proceedings pending against the respondent when he resigned.

(a). In Barnett v. Eberhart, 90-530, the Grievance Panel for the Judicial District of New Haven, Connecticut found probable cause that the respondent "violated Rule 4.4 and Rule 8.4(d) of the Rules of Professional conduct in that he undertook obligations of a fiduciary and then failed to equitably discharge such duties by not paying the balance of an escrow [account]." (Exhibit 7)

(b). In Barnett v. Eberhart, 90-530, the Grievance Panel for the Judicial District of New Haven, Connecticut found probable cause that the respondent "violated Rule 4.1 and Rule 4.4 of the Rules of Professional Conduct" by advising the complainant that medical bills presented as a part of his representation of the complainant's employer had been paid. (Exhibit 8).

(c). In Moore v. Eberhart, 90-0897, the respondent was accused by of perjury. The accusation was made by a former associate. (Transcript p. 27, Exhibit 14).

(d). In Nitsche v. Eberhart, 89-0234, the respondent was charged with failure to provide copies of closing documents. The complaint was made to the Connecticut Bar by Florida residents who are friends of the respondent.

2. The respondent denied the accusation of perjury in the Moore case and he maintains that the complaint by the Nitches was settled (between the lawyer and client) prior to his resignation.

3. When the respondent tendered his resignation from the Connecticut Bar he expressly waived any right to reapply for admission in Connecticut.

4. Under the procedure that applies in Connecticut, a resignation without leave to reapply for admission renders any pending disciplinary proceeding moot.

5. The four disciplinary proceedings pending against the respondent in Connecticut at the time of his resignation were all dismissed as a result of the resignation. Thereafter, the State Bar of Connecticut took no further action against the respondent.

III. RECOMMENDATIONS AS TO GUILT.

I recommend that Respondent be found guilty of violating Rule 4-4.1(a) (in the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person), Rule 4-8.4(a) (a lawyer shall not violate or attempt to

violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the action of another), and Rule 4-8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation), of the Rules of Professional Conduct of the Florida Bar.

IV. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-7.6(k)(l), I considered the following personal history of respondent:

Age: 58 years old

Date admitted to the Bar: February 16, 1981

Prior Discipline: On October 19, 1989, the Connecticut Statewide Grievance Committee reprimanded the respondent. The conduct for which the respondent was reprimanded includes issuing a preliminary certificate at a closing showing the mortgage as a second mortgage. The respondent issued the preliminary certificate of title to the complainant and failed to inform the complainant that he knew of, and was recording a mortgage superior to that of the complainant.

V. AGGRAVATING AND MITIGATING CIRCUMSTANCES

Before making a decision on the recommended disciplinary measures, I considered potential aggravating and mitigating circumstances. Those that apply in this case are:

Aggravating Circumstances

1. The respondent has a prior disciplinary offense.

2. The respondent has engaged in a pattern of misconduct.

3. The respondent has committed multiple offenses.

4. The respondent has substantial experience in the practice of law.

Mitigating Circumstances

1. The respondent made a full and free disclosure to the Florida Bar and he displayed a cooperative attitude in the proceedings in this case.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that he be disciplined by:

A. Disbarment with the special condition that the respondent not be permitted to reapply for admission to practice law in Florida until he been readmitted to practice law in the State of Connecticut.

B. Payment of costs in these proceedings.

Although the conduct underlying the April 19, 1991 suspension in Connecticut is serious, it would not be sufficient in itself to justify disbarment in Florida. However, the respondent's subsequent resignation without leave to reapply in Connecticut is a factor that compels a recommendation of disbarment. Under the circumstances, the resignation left the respondent in no better position than if he had been disbarred in Connecticut. This Court has held that a lawyer who has been disbarred in his home state should not be permitted to practice in Florida. See e.g. Florida

Board of Bar Examiners Re: R.L.V.H., 16 Fla. L. Weekly, S668 (Fla. October 10, 1991); The Florida Bar v. Sanders, 580 So. 2d 594 (Fla. 1991); The Florida Bar v. Sickmen, 523 So. 2d 154 (Fla. 1988). The result should be no different for a lawyer who has resigned in lieu of disciplinary measures in his home state without leave to reapply for readmission.

The condition requiring the respondent to show that he has been readmitted in Connecticut before he may reapply in Florida was included in this recommendation because the respondent has filed a motion to reopen his case in Connecticut. Since the recommendation in this case depends in part on the actions taken in Connecticut, the respondent should have the right to reapply for admission in Florida in the event the decision in Connecticut is changed.

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

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

Referee Level

1.	Administrative Costs	$500.00
2.	Court Reporter's Fees	452.38
3.	Bar Counsel Travel	31.96
	TOTAL	$984.34

I recommended that these costs be charged to the 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 3 day of December, 1992.

PHILIP J. PADOVANO, REFEREE
Gadsden County Courthouse
Quincy, Florida 32351

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; ALISA M. SMITH, Bar Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300; and HARRY S. EBERHART, JR., Respondent at his record Bar address of 95 East Main Street, Meridian, Connecticut 06450, on this 3rd day of December, 1992.

PHILIP J. PADOVANO, REFEREE