

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

CLERK, SUPREME COURT

THE FLORIDA BAR,
Complainant,

vs.

MARK DOUGLAS JASPERSON,
Respondent.

Case No. 80,394 ^{By} _____
Chief Deputy Clerk
TFB Nos. 91-11,636 (13F)
91-11,833 (13F)
91-11,888 (13F)
92-10,370 (13F)

Case No. 80,621
TFB Nos. 92-10,520 (13F)
92-10,621 (13F)
92-10,726 (13F)
92-10,984 (13F)
92-11,083 (13F)

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed to conduct disciplinary proceedings herein according to the Rules of Discipline, hearing was held on February 3, 4 and 5, 1993.

The following attorneys appeared as counsel for the parties:

For The Florida Bar - Cheryl K. Thomas, Esquire
Thomas E. DeBerg, Esquire

For the Respondent - Joseph F. McDermott, Esquire

A variety of different charges have been brought as listed by the case numbers set forth above. By conditional guilty plea for consent judgment signed by all parties and dated January 29, 1993, the respondent entered a plea to improper advertising counts and issues arising therefrom, with The Bar and the Respondent agreeing to the discipline of a public reprimand. (Joint Exhibit 1 in Evidence.) The foregoing disposed of TFB Case Nos. 91-11636(13F) and 92-10,370(13F) in Supreme Court Case No. 80,394. On February 2, 1993, The Bar dismissed TFB Case No. 92-10,726(13F) in Supreme Court Case No. 80,621. (Joint Exhibits 2 and 3 in Evidence.)

After the dispositions referred to above, approximately six matters remained for trial. The Referee will refer to those in the order in which they were tried.

JERRELS MATTER
COUNT 2 - CASE NO. 80,621
TFB NO. 92-10,621(13F)

This matter concerns a wife coming to Respondent's office to request the commencement of a bankruptcy action on behalf of herself and her husband. Primary issues here include whether or not the attorney ever spoke with Mr. Jerrels personally before taking action, whether or not the husband

wished to become involved in a bankruptcy, and whether the signature of Mr. Jerrels on certain bankruptcy papers was or was not the true signature of that individual. Inherent in the difficulties here is that if Mr. Jasperson never met Michael Jerrels prior to the institution of a bankruptcy, he could not have given him the minimum requisite advice to enable the purported client to decide if he wished to become involved in a bankruptcy. Jerrels contends his credit status has been damaged.

Jasperson's position is that in late January of 1991, Mrs. Jerrels came to him in an emergency situation, explaining that a foreclosure judgment had been entered against their family home, with a foreclosure sale scheduled about a week or so later. Respondent never met Michael Jerrels and did not personally observe him sign any documents. Cecilia Jerrels later admitted that she signed her husband's name to the bankruptcy documents.

MALMEN TRANSACTION
COUNT 4 - CASE NO. 80,621
TFB NO. 92-10,984(13F)

In this dispute, Respondent purchased the home of bankruptcy clients to attempt to correct an error made in the timing of the filing of a bankruptcy proceeding vis-a-vis a mortgage foreclosure sale. Several issues are involved here, including whether or not Respondent should have purchased property of clients without the clients being separately represented and whether or not Respondent timely and accurately reported to the bankruptcy court what was occurring. Also, a problem arose concerning an attorney paying or compromising debts of clients with his own funds during the pendency of a bankruptcy. The difficulty centers around the fact that, (a) such procedures would bypass the Trustee and (b) the source of funds would be the attorney's own personal assets rather than those of the clients.

It appears that the bankruptcy case was filed several hours too late to prevent the foreclosure. Thereafter, Jasperson personally purchased the house with the Malmens being unrepresented. Respondent was to pay off the bank, pay \$5,000. to the Malmens, and pay or settle \$22,000. in debts, plus real property taxes. The bar contends that in addition to late filing, Jasperson made at least four errors herein: (1) engaging in a real estate transaction (contract for sale) with a client, without the client being separately represented by other counsel or advising them in writing to do so; (2) by-passing the Trustee; (3) using the attorney's own funds to settle debts of the bankrupts; (4) failing to timely and appropriately report to the bankruptcy court the nature and details of Respondent's personal participation therein.

JOHANNES/BRAUN MATTER
COUNT 5 - CASE NO. 80,621
TFB NO. 92-11,083(13F)

Respective counsel refer to this item generically as the GMAC dispute. A number of items are in controversy here. First, a dispute existed as to the fee quoted and the fee charged. Second, the quality vel non of the representation, focusing to some extent on whether or not there was sufficient contact with attorneys vis-a-vis paralegals or other office personnel. Third, whether the clients received any real benefits from the services performed. Johannes paid to Jasperson fees totaling approximately \$500.

BLOOMER TRANSACTION
COUNT 1 - CASE NO. 80,621
TFB NO. 92-10,520(13F)

In June of 1991, Laura and Jeffrey Bloomer paid \$615. to Respondent for anticipated bankruptcy services. They later changed their minds deciding not to pursue bankruptcy through Jasperson at that time. In August of 1991, Respondent refunded \$400. The only issue here is whether the refund was sufficient.

HAMILTON MATTER
COUNT 3 - CASE NO. 80,394
TFB NO. 91-11,888(13F)

This was a fee dispute involving client dissatisfaction and a case which ended in mid-stream. The Florida Bar produced no testimony in support of this item which should, therefore, be dismissed.

ARCADI TRANSACTION
COUNT 2 - CASE NO. 80,394
TFB NO. 91-11,833(13F)

Dispute concerning a check to be held and allegedly negotiated prematurely. The Florida Bar presented no witnesses in support of this item which should be dismissed.

II. Factual Matters Agreed by Counsel for All Parties:

JERRELS

1. Cecilia Jerrels met with Respondent to arrange for the institution of a bankruptcy proceeding, primarily to forestall a foreclosure sale.
2. Respondent never met with Michael Jerrels or personally discussed with him the various aspects and consequences of bankruptcy proceedings.

3. The papers to initiate the bankruptcy bore the purported signature of both Mr. and Mrs. Jerrels.
4. Michael Jerrels did not sign the bankruptcy petition.
5. Later, Cecilia Jerrels admitted signing her husband's name to the subject documents.

MALMEN

6. Ronald and Karen Malmen retained Respondent to file a bankruptcy proceeding to attempt to thwart a foreclosure sale scheduled several days later.
7. Through an admitted error, the bankruptcy was filed a few hours too late to forestall the foreclosure.
8. On September 17, 1991, Jasperson entered into a contract to purchase the residence.
9. On October 3, 1991, the Malmens signed a deed transferring title to the home to Respondent.
10. On or about October 11, 1991, a motion to redeem was filed in bankruptcy court.
11. On November 27, 1991, Jasperson filed a motion to approve the sale of the dwelling.
12. December 24, 1991, was the date on which Respondent recorded the subject deed.

JOHANNES/BRAUN

13. Susan Johannes retained Jasperson with thoughts of proceeding toward a Chapter 13 bankruptcy.
14. After a series of misunderstandings and changes of circumstances, Johannes filed her own motion to dismiss the bankruptcy proceeding. The bankruptcy court granted the motion, terminating the proceeding.

BLOOMER

15. In mid-June, 1991, Laura Bloomer made deposits totaling \$615. with Respondent in anticipation of bankruptcy proceedings.
16. In mid-August, 1991, Jasperson refunded \$400.

III. Issues to be Determined by Referee:

- (A) Concerning the Jerrels matter, did the Respondent fulfill his duties and responsibilities to Michael Jerrels in the areas of sufficiently meeting with a client to explain the parameters of a bankruptcy action, together with the potential benefits and detriments thereof?
- (B) Did Jasperson fulfill his responsibility to the client and to the bankruptcy court to ascertain whether or not the purported signature of Michael Jerrels on certain bankruptcy papers was authentic?
- (C) In regard to the Malmen transaction, did Respondent act in a reasonably diligent manner to file a bankruptcy action to forestall a foreclosure sale on the clients' residence?
- (D) Whether or not Jasperson should have personally entered into a purchase and sale agreement with his clients in attempting to resolve the late-filing malpractice error?
- (E) Should Respondent have entered into a contract to purchase the Malmen residence and accepted a deed to the premises prior to seeking approval of the bankruptcy court to proceed in such manner?
- (F) Was Jasperson candid and forthright in his testimony and pleadings in bankruptcy court concerning the proceedings in the Malmen matter?
- (G) In the Johannes/Braun litigation, did Respondent charge an excessive fee or fail to represent or advise the client in accordance with community standards?
- (H) Concerning the Bloomer dispute, did Jasperson perform sufficient services to justify accepting a \$615. fee in mid-June, 1991, and refunding only a portion (\$400.) of the fee in mid-August of 1991 when the clients became dissatisfied?

IV. Findings of Fact:

- 1. The Referee finds that Respondent did not fulfill his duties and responsibilities to Michael Jerrels concerning the issues outlined in paragraphs (A) and (B) of Section III of this Report, and in doing so, violated Rules 4-1.2(A), 4-1.4(B), and 4-3.1.

2. Referee further finds that concerning issues outlined in paragraphs (C) through (F) of the preceding section, Jasperson's conduct was improper and failed to comply with several Ethics Rules, including but not limited to 4-1.3, 4-1.8(A), 4-1.8(E), and 4-3.3.
3. The Florida Bar has not convinced the Referee that Respondent failed to comply with rules and regulations in his handling of the Johannes/Braun and Bloomer transactions referred to in paragraphs (G) and (H) above.

V. Recommendations as to Disciplinary Measures to be Applied:

I recommend that Respondent receive a public reprimand and be suspended from the practice of law for a period of one (1) year. Referee further recommends that prior to reinstatement, Respondent be required to complete fifty (50) hours of CLE courses sponsored by The Florida Bar in the areas of Ethics and Law Office Management/Accounting.

VI. Personal History and Past Disciplinary Record:

After finding of guilty and prior to determining discipline to be recommended, pursuant to Rule 3-7.5(K)(1)(4), I considered the following personal history and prior disciplinary record of the Respondent, to wit:

Age: 33

Date Admitted to Bar: 1986

Prior Disciplinary Convictions: None were brought to the Referee's attention.

VII. Statement of Costs and Taxation Thereof:

I find the following costs were reasonably incurred by The Florida Bar: See itemized statements of costs included as Bar Exhibits.

Total Itemized Costs: \$2,662.63

DATED this 10 day of March, 1993.



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