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SID J. WHITE

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CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Case No. 80,690

[TFB Case No. 92-30,992 (07A)]

v.

GARY ALAN BLOOM,

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 Regulating The Florida Bar, hearings were held on April 22, 1993. The Pleadings, Notices, Motions, Orders, Transcripts and Exhibits, all of which are forwarded to The Supreme Court of Florida with this report, constitutes the record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar - Jan K. Wichrowski

For The Respondent - No appearance

- II. 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 on below, I find:

The respondent, Gary Alan Bloom, is and at all times hereinafter mentioned, was a member of The Florida Bar, subject to the jurisdiction of the Supreme Court of Florida and the Rules Regulating The Florida Bar.

Ronald A. Brunelle was seeking to find a buyer for a home in Flagler County, Florida, which Mr. Brunelle had built on speculation. Mr. Brunelle wanted to be relieved of a construction loan held by Colony First Mortgage Company on which he was having difficulty making the payments.

Joseph A. Reuter was a long time client and friend of the respondent. Over a period of time they discussed

entering into various business ventures and in either August or September, 1989, formed a corporation called Empire Security Corporation to accomplish this.

The respondent and Mr. Reuter believed the purchase of Mr. Brunelle's home would be a good business investment for Empire Security Corporation. It was agreed that Mr. Reuter and his mother would live in the home.

On August 31, 1989, Empire Security Corporation entered into a contract for sale and purchase of real property with Mr. Brunelle. According to the terms of the contract, the buyer was to make a mortgage loan application within ten (10) days of the effective date of the contract and obtain a written loan commitment within thirty (30) days of the effective date of the contract.

The respondent has signed the contract as Vice President of Empire Security Corporation. The respondent had advised Mr. Brunelle and Mr. Reuter he would obtain the financing.

The respondent never made any loan applications at any lending institutions within the required time period.

In or around December, 1989, Mr. Reuter approached the respondent and advised him he was still interested in purchasing Mr. Brunelle's home but lacked the money to buy a needed extension agreement for the construction loan. Mr. Reuter insisted the respondent prepare a new contract for sale and purchase.

A second contract was prepared by the respondent in which the buyers were to make a loan application within thirty (30) days from the effective date of the contract and obtain a written loan commitment within forty-five (45) days from the effective date of the contract.

The respondent also prepared an addendum to the contract wherein Ms. Brunelle acknowledged receipt of an approximate \$3,000.00 deposit as having been paid directly to Colony First Mortgage Company and that the buyers would pay any and all charges to Colony before the closing. Although the addendum stated that both buyers would make payments to Colony, the respondent never intended to personally make any payments.

Again, the respondent did nothing to acquire financing for the purchase.

Colony First Mortgage Company initiated proceedings

against Mr. Brunelle, Mr. Reuter, and Mr. Reuter's mother. Mr. Brunelle cross-claimed against Mr. Reuter and sued the respondent as a third party defendant for damages on or about May 2, 1990.

Eventually, Colony First Mortgage's action against Mr. Brunelle and the Reuters was settled when Mr. Reuter obtained financing and bought the property. Mr. Brunelle settled his claim against Mr. Reuter after Mr. Reuter obtained refinancing and purchased the property. Mr. Brunelle continued to pursue his claim against the respondent and during said action was represented by attorney Alan Fields.

Interrogatories were served on the respondent on December 3, 1990, however, he failed to answer. The respondent's deposition was scheduled for January 16, 1991. The respondent mailed a motion for protective order purportedly on January 15, 1991. It was filed with the clerk of the court on January 17, 1991. The respondent failed to attend the deposition.

On January 17, 1991, Mr. Fields responded to the respondent's motion and alleged it was frivolous and merely an effort to delay the case. He further alleged the certificate of service date was false because it did not correspond with the postmark on the envelope which indicated the motion was mailed on the afternoon of January 16, 1991, after the deposition should have occurred.

On February 14, 1991, the court entered an order requiring the respondent to answer the interrogatories on or before February 22, 1991, and present himself for a deposition under oral examination on or before February 26, 1991. The respondent failed to comply with the court's order that he answer the interrogatories.

On August 26, 1991, the court entered an order requiring the respondent answer the still outstanding interrogatories within ten (10) days and pay \$250.00 to the third party plaintiff for costs incurred in seeking sanctions.

On October 24, 1991, the court entered an order to show cause due to the respondent's continuing failure to answer the interrogatories, failure to attend hearings and failure to pay the \$250.00 in costs ordered on August 26, 1991. The respondent was requested to show cause in writing within ten (10) days why he had failed and refused to comply with the court's orders. A failure to respond which resulted in the court striking his pleadings.

The respondent failed to comply with the court's October 24, 1991, order which resulted in the court striking his defensive pleadings. On February 10, 1992, the court granted a summary judgment against the respondent in favor of Mr. Brunelle in the total amount of \$16,296.27.

The respondent's deposition in aid of execution was set for April 3, 1992. A subpoena duces tecum was served on the respondent on March 24, 1992. The respondent filed a motion for protective order on April 2, 1992, in which he alleged he had received inadequate notice of the deposition and as a result the respondent had a conflict with his schedule. He also alleged in general that the discovery was burdensome, oppressive or primarily intended to harass. The respondent scheduled no hearing for his motion.

The respondent failed to appear at the scheduled deposition on April 3, 1992, or otherwise comply with the subpoena duces tecum.

On April 3, 1992, Mr. Fields appeared at the location of the scheduled deposition, the Flagler County Courthouse, in Bunnell, Florida, and saw the respondent in a county courtroom before a judge at 9:50 a.m. The deposition was scheduled to begin at 10:00 a.m. Mr. Fields then observed the respondent in the courtroom at 10:00 a.m. with no one else present. By 10:05 a.m. the respondent had left the courtroom. According to Mr. Fields, the judge to whom the respondent had been speaking advised him later that he was not conducting any trials or hearings with the respondent at the time the observation was made.

On May 21, 1992, the court entered a cost judgment against the respondent in the amount of \$250.00 with interest to accrue at twelve percent (12%) per annum due to the respondent's failure to comply with the subpoena duces tecum and appear for the April 3, 1992, deposition.

On May 21, 1992, the court entered an order finding the respondent to be in indirect criminal contempt of court for his failure to comply with the subpoena issued under the authority of the court. He was ordered to comply with the subpoena duces tecum in aid of execution by appearing on June 1, 1992. A failure to do so would result in the respondent being required to appear before the court on June 12, 1992, to show cause as to why he should not be adjudicated in criminal contempt of court.

In its May 21, 1992, order, the court noted the respondent's failure to appear at previous hearings and

comply with court orders. The court also stated in its aforementioned order that "Bloom is an officer of this court with superior knowledge of its rules and processes and he has offered no reason why he has disobeyed the subpoena duces tecum in aid of execution served upon him by the sheriff of Flagler County, Florida".

The respondent again failed to appear for his deposition on June 1, 1992. On June 12, 1992, the court entered a writ of attachment due to the respondent's failure to comply with the May 23, 1992, order. The sheriff's office was directed to detain the respondent effective June 17, 1992, and hold him for thirty (30) days. The respondent's deposition was reset for June 18, 1992, at which time the sheriff was to deliver the respondent. The writ provided that the respondent could purge himself by paying costs in the amount of \$500.00 and by appearing for the scheduled deposition.

On June 16, 1992, the respondent took the necessary steps to purge himself and requested an emergency hearing which was granted and held on June 17, 1992. The court entered an order temporarily setting aside the writ of attachment conditioned upon the respondent appearing for the scheduled deposition. The respondent did appear for his June 18, 1992, deposition.

As of the grievance committee hearing on August 21, 1992, Mr. Brunelle had not been able to collect any money from the respondent from the judgment previously entered and there is no indication at this time whether the respondent has ever paid the funds owed to Mr. Brunelle.

III. Recommendations 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:

I recommend that the respondent be found guilty and specifically that he be found guilty of violating Rules of Professional Conduct 4-3.4(d) for failing to comply with the legally proper discovery requests by an opposing party; and 4-8.4(d) for engaging in conduct that is prejudicial to the administration of justice.

IV. Recommendation as to Disciplinary measures to be applied:

I recommend that the respondent be suspended for ninety-one (91) days and thereafter until he shall prove his fitness to practice law before a referee. This referee believes it is essential that the respondent pay in full the outstanding civil judgment he owes to Mr. Brunelle as well

as any outstanding costs, judgments and fines in the civil matter because satisfaction of this debt will indicate that he has rehabilitated himself from the type of misconduct which caused this complaint. I further recommend that the respondent be required to pay the bar's costs in prosecuting this case.

I specifically note that the respondent failed to appear for the final hearing in this matter, no counsel appeared on his behalf and the respondent did not contact this referee or bar counsel prior to the hearing to advise that he would be unable to attend.

- V. Personal History and Past Disciplinary Record: After the finding of guilty and prior to recommending discipline to be recommended pursuant to Rule 3-7.6(k)(1), I considered the following personal history and prior disciplinary record of the respondent, to wit:

Age: 35  
Date admitted to Bar: June 1, 1984  
Prior Disciplinary convictions and disciplinary measures imposed therein: None

- VI. Statement of costs and manner in which costs should be taxed: I find the following costs were reasonably incurred by The Florida Bar.

A.	Grievance Committee Level Costs	
	1. Transcript Costs	\$121.15
	2. Bar Counsel/Branch Staff Counsel Travel Costs	\$ 25.99
B.	Referee Level Costs	
	1. Transcript Costs	(Not yet available)
	2. Bar Counsel/Branch Staff Counsel Travel Costs	\$ 38.72
C.	Administrative Costs	\$500.00
D.	Miscellaneous Costs	
	1. Investigator Expenses	\$221.63
	TOTAL ITEMIZED COSTS:	\$907.49

\* { It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses together with the foregoing itemized 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 27 day of April, 1993.

  
PETER HADDAD  
Referee

Original to Supreme Court with Referee's original file.

Copies of this Report of Referee only to:

Ms. Jan K. Wichrowski, Bar Counsel, 880 North Orange Avenue,  
Suite 200, Orlando, Florida 32801

Mr. Gary Alan Bloom, Respondent, 1 Florida Park Drive, #230,  
P. O. Box 350040, Palm Coast, Florida 321350

Mr. John Berry, Staff Counsel, The Florida Bar, 650  
Apalachee Parkway, Tallahassee, Florida 32399-2300