

FILED

SID J. WHITE

JAN 19 1994

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,
Complainant,

v.

Case No. 81,824

RICHARD PAUL CONDON,
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: September 29, 1993, and December 1, 1993.

The following attorneys appeared as Counsel for the Parties:

For the Florida Bar:	Thomas DeBerg, Esquire
For the Respondent:	The Respondent, Richard Paul Condon, Esquire

II. Findings of Fact as to Each Item of Misconduct of Which Respondent is Charged: After considering all the pleadings and evidence before me, pertinent portions of which are commented upon below, I find:

A. AS TO VIOLATION OF RULE 4-1.15(a), Rules Regulating the Florida Bar, (A lawyer shall hold in trust, separate from the lawyer's own property, funds and property of clients or third persons that are in a lawyer's possession in connection with a representation):

1. Respondent has had an ongoing attorney-client

relationship with Larry and Maras Freeman since the early 1970's (Transcript of Hearing September 29, 1993, at pg. 118).

2. As a result of that relationship, Respondent represented the Freemans in three (3) separate mortgage foreclosure suits against the mortgagee, AMERICAN FUNDING LIMITED.

3. As a further result of that relationship during 1988 and 1989, the Freemans gave Respondent approximately \$9,500.00 to be placed in trust for their mortgage payments. (Transcript of Hearing September 29, 1993, at pgs. 121, 130-132).

4. On July 18, 1989, Counsel for AMERICAN FUNDING LIMITED, Douglas Zahm, made a written settlement offer to Respondent. (Complainant's Exhibit #17).

5. In response to that offer, Respondent prepared a letter of acceptance and purportedly forwarded a trust account check to Douglas Zahm. (Complainant's Exhibit #18).

6. Douglas Zahm never received the letter (Complainant's Exhibit #18) nor did he receive any trust monies from Respondent (Transcript of Hearing September 19, 1993, at pg. 133).

7. Respondent advised the Freemans that he had sent the letter and the trust monies. (Transcript of Hearing September 29, 1993, at pg. 133).

8. Thereafter, the Freemans hired new Counsel, A.J. Musial, Jr. Attorney Musial contacted Respondent regarding the trust monies paid by the Freemans. Respondent verbally advised Musial that the Freemans had \$8,500.59 in trust with him. (Transcript of Hearing September 29, 1993, at pgs. 38, 44).

9. In February, 1991, Attorney Musial wrote a letter to

Respondent to verify the trust amount. In response, Respondent forwarded escrow statements to Musial acknowledging the monies that he had in escrow for the Freemans. (Complainant's Exhibit #6).

10. Respondent's ledger cards indicate that between April 22, 1988 - June 1, 1989, he received approximately \$6,439.44 in trust monies from the Freemans (Respondent's Exhibits #12, #13; Transcript of Hearing December 1, 1993, at pgs. 37, 45-52).

11. Between April 22, 1988 - June 1, 1989, Respondent had two (2) bank accounts labelled trust or escrow accounts, to-wit: University State Bank and the Village Bank. (Transcript of Hearing September 29, 1993, at pg. 237).

12. A review and investigation of those accounts by Pedro Pizaarro of the Florida Bar reveal that when the Freemans, as of April 28, 1989, had given Respondent approximately \$7,300.00 in trust monies, the Respondent's trust account balance was \$56.00. (Complainant's Exhibit #21).

13. The monies given to Respondent to be held in trust have never been accounted for; in fact, Respondent does not know what happened to the monies despite his letters to Attorney Zahm and Attorney Musial. In fact, when corresponding with Attorney Musial, Respondent believed he had zero monies of the Freemans in escrow. (Transcript of Hearing December 1, 1993, at pgs. 35-40; 52; 55-56).

14. Respondent intentionally misled and lied to the Freemans and Attorney Musial regarding the trust monies provided to him.

B. AS TO VIOLATION OF RULE 4-1.5(b), Rules Regulating the Florida Bar (Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person):

15. The Florida Bar has abandoned this charge (Transcript of Hearing December 1, 1993, at pg. 93).

16. The referee finds no evidence of misconduct as to this Violation.

C. AS TO VIOLATION OF RULE 4-1.15(c), Rules Regulating the Florida Bar (When in the course of representation a lawyer in possession of property in which both the lawyer and another person claim interests, the property shall be treated by the lawyer as trust property):

17. The Referee realleges the above-numbered paragraphs 1-14.

18. Respondent cannot account for any of the monies given to him by the Freemans for their mortgage payments. (Transcript of Hearing December 1, 1993, at pg. 35-40).

19. Respondent has acknowledged that the monies given to him by the Freemans were for the Freemans mortgage payments (Transcript of Hearing December 1, 1993, at pg. 38).

20. Respondent knew that the monies he was holding in trust for the Freemans were for their mortgage payments. He acknowledged this to the Freemans, Attorney Zahm, and Attorney Musial (Complainant's Exhibits 6, 17, 18; Transcript of September 29, 1993, at pg. 84, 133).

21. Respondent cannot account for the monies.

D. AS TO VIOLATION OF RULE 5-1.1(a), Rules Regulating the Florida Bar (money or other property entrusted to an attorney for a specific purpose is held in trust and must be applied only for that purpose):

22. The Referee realleges the above-numbered paragraphs 1-14; 18-21.

23. The monies given to Respondent by the Freemans were specifically given for Respondent to pay their mortgage payments. Respondent acknowledged this fact. (Transcript of Hearing December 1, 1993, at pg. 38).

24. The monies are gone; and Respondent cannot account for them and they were never applied to the mortgage payments.

III. Recommendations as to Whether or Not the Respondent Should be Found Guilty:

- A. As to a Violation of 4-1.15(a):
GUILTY;
- B. As to a Violation of 4-1.15(b):
NOT GUILTY;
- C. As to a Violation of 4-1.15(c):
GUILTY;
- D. As to a Violation of 5-1.1(a):
GUILTY.

IV. Recommendation as to Disciplinary Measures to be Applied:

I have considered the mitigation offered by Respondent by his testimony and that of Dr. Joseph Rawlings (Respondent's Exhibit #27).

Based on all of the above, I recommend that Respondent be **DISBARRED** from the practice of law in Florida.

V. 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 pursuant to Rule 3-7.6(k)(1).....	\$ 500.00
Miscellaneous	
Huntington Federal Savings Bank (12/23/92)	
Copies (22 pages @ \$.025).....	5.50
Research (2.5 hrs. @ \$15.00).....	37.50
Staff Auditor Expenses	
Pedro Pizarro (1/5/93)	
Time Expended (28.7 hours).....	1,098.35
Court Reporter Expenses	
Michael Musetta & Associates, Inc. (2/10/93)	
Attendance.....	35.00
Assistant Staff Counsel Expenses	
Cheryl K. Thomas (2/10/93)	
Travel Expenses (10 miles @ \$0.33).....	3.30
Staff Auditor Expenses	
Pedro Pizarro (9/29/93)	
Travel Expenses (69 miles @ \$0.34).....	23.46
Assistant Staff Counsel Expenses	
Thomas E. DeBerg (9/29/93)	
Travel Expenses (47 miles @ \$.034).....	59.27
Court Reporter Expenses	
Gregg R. Stone & Associates (9/29/93)	
Attendance.....	302.50
Staff Auditor Expenses	
Pedro Pizarro (11/17/93)	
Travel Expenses (307 miles @ \$0.34).....	104.38
Other.....	2.00
TOTAL.....	<u>2,171.26</u>

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.

DATED this 18 day of January, 1994.


WILLIAM G. SESTAK, Referee

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above Report of Referee has been served on Thomas DeBerg, Esquire, Assistant Staff Counsel The Florida Bar, at Suite C-49, Tampa Airport-Marriott Hotel, Tampa, Florida 33607; Richard Paul Condon at 214 Bullard Parkway, Suite C, Temple Terrace, Florida 33617; and Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300 this 18 day of January, 1994.

