IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR, Complainant, v. SHARI NICOLE HINES, Respondent. _________________________________/	Supreme Court Case No. SC08-2297 The Florida Bar File No. 2008-51,148(17A)

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

On December 10, 2008, The Florida Bar filed its complaint in this matter and the Respondent served an answer thereto. The undersigned was appointed to preside as referee in this proceeding pursuant to the Supreme Court's Order dated December 10, 2008 and the December 16, 2008 Order from the Honorable Kathleen J. Kroll, Chief Judge of the Fifteenth Judicial Circuit of Florida.

During the course of these proceedings, Respondent was represented by Kevin P. Tynan and The Florida Bar has been represented by Lorraine C. Hoffmann.

The final hearing was held on Thursday, May 7, 2009. The pleadings and all other papers filed in this case, which are forwarded to the Supreme Court of Florida with this report, constitute the entire record.

II. **FINDINGS OF FACT**:

A. Jurisdictional Statement: At all times material to this action, Respondent, Shari Nicole Hines, was a member of The Florida Bar subject to the jurisdiction and disciplinary rules of The Supreme Court of Florida.

B. Narrative Summary of Case:

Agreed Facts

The Parties entered into a Joint Pre-trial Stipulation which set forth certain agreed upon facts which are adopted as factual findings as follows:

1. Prior to November 2007, part of Respondent's law practice included real estate transactions and she was introduced to a company known as Paramount Lending Group (hereinafter "Paramount").

2. The principal of Paramount was John Mohan (hereinafter "Mohan"), a nonlawyer. Ida Ocasio (hereinafter "Ocasio') was employed by Paramount as a non-lawyer title processor.

3. In late November 2007, the Respondent began accepting potential real estate closings from Paramount. During the course of the business relationship, the Respondent assumed responsibility for two closings that were generated by Paramount. The second of these closings was a transaction between Alyce and Frederick Droege (the sellers) and George Melendez (the buyer).

4. Prior to either of the above-mentioned real estate transactions, the Respondent had relocated her law office to the same building as Paramount and became a tenant of Paramount.

5. Prior to either of the above-mentioned real estate transactions, the Respondent opened a new escrow account for any and all transactions with Paramount. The Respondent gave Mohan shared signatory authority over this escrow account. Respondent recognized the inherent danger of allowing a non-lawyer access to an escrow account maintained in her name, as an escrow agent and Florida lawyer. Accordingly, Respondent placed caps on the amounts of money that Mohan could access and/or control in the escrow account.

6. The Droege to Melendez transaction involved the sale of a home owned by the Droeges and located in Deltona, Florida.

7. On or about December 17, 2007, the Respondent was advised by Ocasio that the Droege to Melendez transaction needed to close that day in Orlando, Florida, pursuant to the closing instructions provided by the lender. As a result of this conversation, the Respondent forwarded, via Fed Ex, 10 blank, signed escrow account checks, to be used for the closing.

8. On December 18, 2007, the closing was conducted by Ocasio, with all parties executing the required closing documents. The Respondent did not attend the closing.

9. Respondent did not see, review, or approve the closing documents before the closing.

10. The HUD-1 closing statement executed by all parties to the closing indicated that a mortgage held by Dovenmuehle Mortgage, Inc, in the amount of $34,714.10 was to be satisfied and that the Droeges were to be paid the sum of $128,802.68 as their proceeds from the sale.

11. After executing their closing documents the Droeges were given, by Ocasio, an escrow account check drawn in their favor in the amount of $128,802.68.

12. The Droeges deposited this $128,802.68 check into their account at SunTrust, were advised by the bank that there would be a ten (10) day hold on the check but that ten thousand dollars ($10,000.00) of that check would be credited immediately and available for use by the Droeges. The Droeges wrote checks against this $10,000.00.

13. On December 24, 2007, SunTrust advised the Droeges that the $128,802.68 was being dishonored because a stop payment order had been issued regarding this check.

14. It was subsequently determined that Mohan had placed a stop

payment order on the $128,802.68 check and that he had misappropriated these funds, as well as the required mortgage pay-off in the amount of $34,714.10 to his own use by electronically transferring these funds to his own bank account.

15. The Respondent, through a SunTrust banking officer, was made aware of the stop payment order, on or about December 27, 2007.

16. The Respondent was able to recover the sum of $45,000.00 from Mohan, wired this sum to the Droeges on or about January 2, 2008.

17. After discovering that Mohan had misappropriated the aforementioned funds, the Respondent reported the matter to the criminal authorities, who initiated a successful criminal action against Mohan.

18. The problem with the Droege to Melendez transaction was reported to Respondent's underwriter, Attorney's Title Insurance Fund.

19. On February 28, 2008, the Fund, through its counsel, satisfied the Dovenmuehle mortgage and also sent the Droeges a check in the amount of $83,802.68. This check, when coupled with the $45,000.00 previously sent to them by the Respondent, completed the restitution owed to the Droeges as a result of Mohan's theft of the proceeds from their original escrow check.

ADDITIONAL FACTS

20. During the final hearing testimony was heard from Alyce Droege, the

seller of the property in question, Susan D. McCabe and Phillip F. Bonus, the attorneys who represented Alyce and Frederick Droege with their post closing problems, Michele Primeau, Shari Hines, the Respondent, Kaye Ann Baxter, who was primarily a character witness but she had represented the Respondent relative to the legal problems that arose because of the Droege closing and Barry M. Sickles, who was a character witness.

21. In reaching a decision in this case the referee also considered several exhibits introduced by the parties.

22. After considering the parties Pre-trial Stipulation, the testimony of the various witnesses and the exhibits that were introduced during the final hearing, the referee finds that The Florida Bar failed to present by clear and convincing evidence of the rule violations plead in their complaint and as such the referee finds in favor of the Respondent. At the core of the Bar's presentation was the fact that the Respondent had placed a non-lawyer on her escrow account as a signatory and that this decision ultimately provided the vehicle by which Mr. Mohan engaged in criminal conduct. The referee was presented with no evidence or case law indicating that it was unethical for an attorney to have a non-lawyer signatory on an escrow account. In fact, the Respondent pointed to a Florida Bar Ethics Opinion that specifically sanctioned such action. See Fla. Ethics Opinion 64-40. Furthermore, the referee finds that at the time of Respondent's decision to make

Mr. Mohan a signatory on the account, she had no reason not to trust him and there were no warning signs that he might engage in criminal activity until he had stolen the money.

23. Based upon the testimony given by the Respondent, the referee finds her testimony credible and that she is remorseful.

III. RECOMMENDATION AS TO VIOLATIONS OF THE RULES REGULATING THE FLORIDA BAR:

At trial, The Florida Bar made an ore tenus motion to amend the Bar's complaint to conform to the evidence adduced at trial. Respondent did not object, and made no showing of prejudice. Accordingly, the Bar's motion is granted. *See* R. Regulating Fla. Bar 3-7.6(f)(1) and Fla. R.Civ. P. 1.190(b).

Based upon the Joint Pretrial Stipulation and the evidence presented during the final hearing, the referee finds as follows:

24. As to R. Regulating Fla. Bar 4-1.1 [A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.], the referee finds the Respondent did not violate this rule as the Bar did not present clear and convincing evidence that this rule was violated.

25. The referee finds that the Respondent did not violate R. Regulating

Fla. Bar 4-1.15 [A lawyer shall comply with the rules Regulating Trust Accounts.] in that there was no evidence that merely having a lay person on an escrow account was unethical. The referee recognizes, as does the Respondent after the fact, that this was not necessarily a good business practice or the exercise of prudent judgment.

26. The referee finds that the Respondent did not violate R. Regulating Fla. Bar 4-5.3(a) [A person who uses the title paralegal, legal assistant, or other similar term when offering or providing services to the public must work for or under the direction of or supervision of a lawyer or an authorized business entity as defined elsewhere in the Rules Regulating The Florida Bar.] as the Bar has presented no evidence that would form the basis for a violation of this rule. The referee recognizes that Respondent's efforts to review the closing documents prior to the closing were thwarted by Ocasio when the closing documents were received they appeared to be in good order with the exception of a missing deed that may or may not have been available at the closing.

27. The Referee finds that the Respondent did not violate R. Regulating Fla. Bar 4-5.3(b) [With respect to a nonlawyer employed or retained by or associated with a lawyer or an authorized business entity as defined elsewhere in the Rules Regulating The Florida Bar: (1) as a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial

authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer; (2) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and (3) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if (A) the lawyer orders or, with the knowledge of the specific conduct ratifies the conduct involved; or (B) the lawyer is a partner or has comparable managerial authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated by fails to take reasonable remedial action.]. The referee finds that the Respondent exercised poor judgment in forwarding blank pre-signed escrow account checks to the closing paralegal. However, the checks were written to the proper parties. The Referee also finds that Respondent's attempt to place controls on the escrow account utilized by Mohan were unsuccessful. It was Mohan's stopping payment on the checks that caused the harm. Respondent had no inkling that Mohan would commit a criminal act. This rule requires that a lawyer is responsible for the conduct of another person if they ordered it, ratified it or knows of the conduct at the time. There was not a scintilla of evidence to that effect.

28. The Referee finds that the Respondent did not violate R. Regulating Fla. Bar 4-5.3(c) [Although paralegals or legal assistants may perform the duties delegated to them by the lawyer without the presence or active involvement of the lawyer, the lawyer shall review and be responsible for the work product of the paralegals or legal assistants.]. This rule makes a lawyer responsible for the work product of their paralegals and legal assistants. The only testimony was that the Respondent was making every effort to get the closing documents, before and after the closing, and that ultimately she secured the closing file and reviewed it. The Respondent testified that the only problem she saw with the closing file was that the original executed deed was missing but there is no evidence that the deed was actually missing at the time of the closing.

29. The Referee finds that the Respondent did not violate R. Regulating Fla. Bar 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 acts of another.] as the Referee finds that the Respondent had no knowledge of what Mr. Mohan was doing, until after it had occurred. The fact that the Respondent was initially misled by Mr. Mohan that it was just a “mistake” does not change the opinion of the Referee.

30. Referee finds the Respondent not guilty of 4-8.4(d) [A lawyer shall

not engage in conduct in the connection with the practice of law that is prejudicial to the administration of justice . . .]. The conduct described in the testimony and evidence does not appear to fit the type of conduct specifically referenced in the rule. The Bar did not present by clear and convincing evidence that the Respondent's conduct was prejudicial to the administration of justice. The Referee does not condone or endorse the decisions of the Respondent of allowing Mohan access to the escrow account. It is extremely unfortunate that the Droeges were harmed as a result of Mohan's criminal actions.

IV. <u>RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED</u>:

Having found the Respondent not guilty of violating the Rules of the Florida Bar referenced above, the referee makes the recommendation of no disciplinary action against the Respondent.

V. <u>PERSONAL HISTORY AND PAST DISCIPLINARY RECORD</u>:

After making the foregoing findings, but prior to making the disciplinary recommendation, the referee considered the following personal history, the applicable mitigating and aggravating factors and Respondent's prior disciplinary record.

Respondent is 37 years old and was admitted to The Florida Bar in July, 1999. She is not a member of any other state bar. From May 2002 until January

2005, she ran and managed her own title agency, and supervised a staff of "between four and five." At the time of the incident charged in the Bar's complaint, Respondent's law practice focused primarily on personal injury and real estate law. Respondent is not currently practicing law, is no longer doing title work, and has gone on inactive status with The Attorney's Title Insurance Fund. Respondent also expressed remorse, and both Kaye Ann Baxter, Esq. and Barry M. Sickles, Esq. testified as to their good opinion of her character. Finally, Respondent has no prior disciplinary record. *See* Florida Standards for Imposing Lawyer Sanctions, Standard 9.3, Mitigation.

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

The referee recommends that each side should bear their own costs.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida on this _______ day of June, 2009.

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HON. DIANA LEWIS, REFEREE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. mail to: Lorraine C. Hoffmann, Bar Counsel, The Florida Bar, 1300 Concord Terrace, Suite 130, Sunrise, FL 33323; Kenneth Marvin, Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399 and to Kevin P. Tynan, Esq., Attorney for the Respondent at 8142 N. University Drive, Tamarac, FL 33321 on this ____ day of May, 2009.

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HON. DIANA LEWIS, REFEREE