IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR

Complainant,

v.

WILLIAM BEDFORD WATSON, III,

Respondent,

_____/

CASE NO. SC09-2022

TFB File Nos. 2008-00,715(8B),
2009-00,113(8B),
2009-00,116(8B),
2009-00,142(8B).

# REPORT OF REFEREE

## I. SUMMARY OF PROCEEDINGS

The undersigned was appointed as referee in this matter. The Florida Bar ("The Bar") filed a Complaint against the Respondent, William Bedford Watson, III ("Watson") on October 29, 2009. The Complaint asserts four different counts: Count I, a transaction involving Steven Hooks, alleging violations of Rules 4-8.4(c) and 5-1.1(b), Rules Regulating the Florida Bar ("Rules"); Count II, a transaction involving Karl Brown, alleging a violation of Rule 5-1.1(b); Count III, a transaction involving Marion Reid, alleging violations of Rules 4-8.4(c) and 5-1.1(b); and Count IV, a transaction involving Brandon Bury, alleging violations of Rules 4-8.4(c) and 5-1.1(b). At the final hearing, the Bar announced that the grievance committee had not found probable cause of a violation of Rule 4-8.4(c)

as alleged in Count IV, and that the Bar was not pursuing that charge. A final hearing was conducted on April 27 and 28, 2010. The pleadings, transcripts, exhibits received in evidence, and this Report constitute the record in this case and will be forwarded to the Florida Supreme Court.

## II. FINDINGS OF FACT

A. Jurisdictional Statement. Watson is, and at all times material to this action 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.

Phil Walton ("Walton") resides in Florida. He makes his living through commercial transactions, usually assisting individuals in obtaining financing for projects. Walton first hired Watson to handle some legal affairs for him in 2002 or 2003, and has used Watson's services for legal matters several times thereafter, probably in 10 to 15 different transactions.

Jason Meyer ("Meyer") is a developer. In 2007 and 2008, Walton assisted Meyer in obtaining standby letters of credit, a financing device that Meyer was using to fund development projects. Because Meyer was having difficulty getting a standby letter of credit accepted or funded by a bank, Walton suggested that he contact Watson for assistance, so that Meyer could have a lawyer "pay master" involved. Watson had experience handling international transactions, transactional

funding, and large real estate projects. In January, 2008, Meyer contacted Watson to represent him in this matter and, in particular, to assist him obtain standby letters of credit. Watson and Meyer never personally met, and all of their contact was by telephone or e-mail. Watson got involved, and determined that a standby letter of credit had been issued but not funded.

In an effort to obtain the necessary funding, Meyer asked Walton to get assistance from Navin Subramaniam-Xavier ("Navin"), who was also in Florida working as a commodity trader and investor. Meyer had known Navin since the end of 2007.

Meyer introduced Navin to Watson during a telephone conference call. Navin and Watson had many telephone conversations in January, 2008. Navin said that Watson told him he had done these transactions many times before, and that they were secure. Navin also asked his friend, Karl Brown ("Brown"), a general magistrate in Dade County and member of the Florida Bar since 1991, for advice about the investment. Navin had acted as a mortgage broker for Brown, and they had been friends for 10 years.

Navin was able to obtain $400,000.00 from his uncle to assist in funding Meyer's project. Brown reviewed some documents that Navin had prepared for his uncle's transaction. At Navin's request, Brown also investigated Watson. Brown determined that Watson was an AV rated lawyer with a good reputation.

On January 14, 2008, Navin and Meyer signed the contract that Navin had prepared. Watson played no part in the negotiation or preparation of the contract. The agreement specifically provides that Navin's funds are to be held in Watson's trust account. For this investment, Navin and his uncle were to be repaid the principal plus $300,000.00, within 48 hours.

On January 15, 2008, Navin transferred his uncle's $400,000.00 into Watson's trust account. Watson wrote a letter to Navin the same day, acknowledging the agreement. Watson and Navin had telephone conversations that day concerning the funds. Navin agreed that the funds could be released from Watson's trust account and disbursed according to Meyer's instructions, which was confirmed by e-mail messages between Watson and Navin. Following those instructions, Watson disbursed the funds from his trust account. Despite not having received payment as promised, there was no complaint from Navin or his uncle concerning this transaction, as Watson handled it properly..

Steven Hooks ("Hooks") is an investor and financial consultant in Texas. In early January, 2008, he was introduced to Meyer through a mutual friend. Hooks understood that Meyer was in the process of securing funds for a development project in Arizona. Hooks and Meyer had numerous telephone conferences, some including Watson, although the terms of the deal were negotiated by Hooks and Meyer, not Watson. Hooks understood from Meyer that for his investment of

$300,000.00, he would receive a return of $600,000.00 within 48 hours. Hooks believed that Watson was an independent escrow agent and not Meyer's lawyer, although Watson made no such representation. He also understood that his funds would remain in Watson's trust account, and not be disbursed without his permission. Watson denies telling Hooks anything about the funds remaining in his trust account, nor did he hear Meyer say that. Watson asserts that he always understood that the funds would be disbursed as Meyer, his client, instructed.

Watson wrote a letter to Hooks on January 8, 2008, summarizing the transaction. The copy of the letter is not signed, and Hooks denies receiving it. Watson wrote another letter to Hooks on January 16, 2008, which he called a "disbursement letter." Watson said that he prepared that letter based on his understanding of the transaction from Hooks. This letter was transmitted by e-mail to Hooks, with copies to Meyer and Walton. Hooks received that letter, and believed that it accurately reflected his understanding of the transaction, particularly concerning the funds being held in Watson's trust account. Within hours after receiving the letter, Meyer made handwritten changes to it and transmitted it by e-mail to Hooks, with a copy to Watson. Hooks denies receiving the changed version. Although Watson received his copy, he did not communicate with Hooks regarding the corrected letter.

On January 22, 2008, Hooks transferred $300,000.00 into Watson's trust

account. The next day, Watson, acting upon Meyer's instructions, disbursed those funds from his trust account. When he later learned that the money was gone, Hooks made an effort to recover his funds, both through Watson and Meyer. He said that Meyer has paid him about $72,000.00, but not the balance.

Navin continued to contact other individuals about investing with Meyer. He requested Walton to send him an e-mail, so that he would have something in writing to show proposed investors. Walton did so on January 28, 2008. Walton's e-mail message to Navin states, in part, "This is an excellent opportunity for an investor no risk and Watson & Watson will provide a letter of undertaking to the lender that payment will be effected from the first disbursement from the transaction that is being funded."

Navin spoke with Brown about this deal. Navin explained to Brown that the funds would remain in Watson's trust account, so there was little risk. Since Brown had previously checked out Watson, and being familiar with a lawyer's responsibilities with a trust account, he felt comfortable in investing in the transaction. Brown said that he did speak with Watson by telephone prior to investing his money, to explain his concerns. He was worried about getting involved in an illegal scheme and about the money being released to Walton. Brown said that Watson told him not to be concerned, that he had handled many of these transaction before, and that Brown's funds would be kept in his trust

account. Watson denies ever having any conversations with Brown about Brown's funds until after they were disbursed.

Since Brown anticipated earning a 25% profit on his investment in a very short time, with little risk, Brown spoke with his friends, Richard Lawson ("Lawson") and Brandon Bury ("Bury") about this deal. Brown gave the names of possible investors to Navin, who passed them on to Walton. Watson was provided with the information about potential investors and, at either Walton or Navin's request, Watson prepared letters to five possible investors. These letters were on Watson's letterhead, signed by him, dated February 1, 2008, and were addressed to Brown, Bury, Lawson, Azim Ramlize, and Lashon Toyer. Watson sent these letters by e-mail to Navin. Watson said that he understood that the letters would not be given to the addressees until after they had invested funds into his trust account.

Marian Reid ("Reid") is Lawson's mother. She is a registered nurse. Lawson spoke with her about the investment. Reid was initially hesitant. Lawson explained to her that the transaction was secure, as Navin assured him that the funds would remain in Watson's trust account. Lawson showed her the five letters, and after seeing them, she believed that all of the other addressees were investing. Reid understood that she would receive a profit of 25% on her investment.

Bury is self-employed in a swimming pool chemical business. He discussed

the investment with Brown, and understood that the funds were to remain in Watson's trust account. Bury also understood that he would receive a 25% return on his investment.

Bury deposited $50,000.00 into Watson's trust account on January 30, 2008. Brown deposited $46,000.00 into Watson's trust account on January 31, 2008. Reid deposited $100,000.00 into Watson's trust account on February 1, 2008. Watson disbursed all of those funds from his trust account on February 4, 2008, acting on Meyer's instructions. Watson did not seek permission from Brown, Reid or Bury before sending the monies from trust, because, in his opinion, the funds belonged to Meyer once they were deposited into the trust account.

Watson sent a letter to Brown on February 6, 2008, saying the same thing as the February 1, 2008 letter. On February 29, 2008, Watson wrote letters to Brown and Reid, acknowledging a delay in the transaction. After some time passed, Brown contacted Watson to ask about the transaction, and learned that the funds had been transferred from Watson's trust account.

Brown, Reid and Bury have all made efforts, in some form or fashion, to get their money back. They have recovered nothing. All of the investors, Hooks, Brown, Reid and Bury, have asserted that Watson is responsible to them for transferring the monies out of his trust account.

Meyer paid Watson $25,000.00 for attorney's fees earned. Watson said he is

owed more for fees because of legal services he performed for Meyer. Otherwise, Watson received no financial benefit from the monies invested.

Watson has practiced law in Gainesville, Florida for over 40 years, and has had no prior disciplinary actions. Watson served for several years on a grievance committee. He has been a reputable member of the legal community.

The Bar's auditor noted that Watson's trust account was in compliance with the record keeping rules, but he could not offer an opinion as to whether the funds were utilized for the intended purposes. Whether Watson violated the applicable rules is an issue of credibility. Simply put, it is a matter of one party's word against another. Watson said he never agreed to hold the investors' funds in his trust account, while they say he did. The testimony of the parties must be evaluated in light of all of the evidence in the case.

The first transaction involving Navin's uncle was handled the proper way; there was a written agreement requiring the funds to remain in trust, and Watson secured written permission to disburse them.

Given the large sums involved and the sophisticated nature of some of the investors, it is puzzling why the parties did not put their agreements in writing. However, the absence of documentation lends credence to the investors' assertions that they believed that their funds were secure in a lawyer's trust account.

There was never any dispute that the funds were to be initially deposited into

Watson's trust account. Watson said the investors understood that their funds were not to remain in his trust account, and that it would not have made any sense to keep the funds there when they were needed for Meyer's attempts to obtain funding for the standby letter of credit. Despite that, Watson wrote the letter to Hooks on January 16, 2008, saying that the money would be held in trust, which he wrote based on his understanding of the transaction from Hooks. Why would Watson write and send that letter if it was not true? That letter is evidence that Hooks understood that the funds would be held in trust, and that he communicated that to Watson. Watson did say that Meyer corrected that letter, but why didn't Watson assure that Hooks knew that his understanding was incorrect?

Watson continually asserted that it did not make any sense that the funds would be held in trust, because they were needed by Meyer for the standby letter of credit. Why, then, were Navin's uncle's funds to be held in trust on the first transaction?

The five letters to potential investors that Watson wrote on February 1, 2008 are also troubling. Watson acknowledges, in hindsight, that it was a mistake for him to have written those letters. Even if he trusted Navin, he knew that the letters were incorrect and that there was a potential for their misuse. The letters certainly could have created a sense of security in an investor because a lawyer was handling their funds.

Another issue is troubling. If Meyer was his client, why was Watson preparing letters at the request of these other individuals? Watson could have communicated with Meyer before preparing correspondence to assure that he conveyed the transaction correctly, but he did not.

Watson's February 6, 2008 letter to Brown, and February 29, 2008 letters to Brown and Reid, could certainly lead them to believe that their funds were to remain in trust. Watson said he regrets having written those letters. If, in fact, the funds belonged to Meyer upon deposit to his trust account, as Watson asserts, why did he write these letters? The funds had been disbursed by the time he wrote these letters, but he did not say that.

Navin confirmed that Brown participated in conference calls with Meyer, Watson and him. Navin was adamant that the investors always understood that their funds were to remain in Watson's trust account.

Walton, although never saying that the funds were to be held in trust, also created a sense of security in the transactions by saying in writing that there was "no risk". Why would Walton have said that if, in fact, the funds were to be released from trust and the transaction was in fact very risky?

It is difficult to understand why Watson used his trust account for these transactions. When asked why, he said "I have no idea." He also explained that "it was just the way they wanted to do the deal", and that it was to make the investors

feel secure that they would receive their profits; Meyer was to make his payments back to the investors through Watson's trust account. Why would that make people feel any more secure than if Meyer sent them the money himself? On the other hand, it is easy to understand how individuals would feel secure in depositing their funds into a lawyer's trust account, especially if they believed that those funds would not be released without their consent. In fact, the use of Watson's trust account in these transactions made the investors feel very secure.

Watson denied any duty to the investors, asserting that his loyalty is to his client, Meyer. He stated that once the funds were deposited into his trust account, he was responsible only to Meyer, and not Hooks, Brown, Reid and Bury.

III. ANALYSIS.

The evidence to sustain a disciplinary decision against a respondent must be clear and convincing. It is something less than beyond a reasonable doubt, as required in criminal cases, and something more than a preponderance of the evidence, as required in civil cases. *The Florida Bar v. McCain,* 361 So.2d 700, 706 (Fla. 1978).

The comment to Rule 5-1.1 states: "A lawyer must hold property of others with the care required of a professional fiduciary." In *The Florida Bar v. Ward,* 599 So.2d 650 (Fla. 1992), the court addressed this responsibility: "The basis for this distinction is the unique fiduciary duty which lawyers, individually and as a

profession, owe to their clients.... Never is an individual's trust in an attorney more evident, or more at risk, then when he places funds or property into the hands of his attorney." *Id.* at 651. *See, also, The Florida Bar v. Martinez-Genova,* 959 So.2d 241 (Fla. 2007). As explained in *The Florida Bar v. Joy,* 679 So.2d 1165 (Fla. 1996), lawyers often hold funds in escrow where their client is one principal and some other non-client is another principal party. By undertaking to do so, the lawyer establishes a new legal relationship with the principal parties either by an expressed agreement or by an agreement implied in law. The relationship that is established is one of principal and agent, in which the lawyer is an agent of, and owes a fiduciary duty to, all of the principals. Absent a written agreement, the law implies that the attorney will know the conditions of the principals' agreement and will exercise reasonable skill and ordinary diligence in the holding and delivering of the escrowed funds in accordance with that agreement. *Id.* at 1167.

The Bar has presented clear and convincing evidence that Watson was obligated to hold the funds delivered by Hooks, Brown, Reid and Bury in his trust account without disbursing them, and that his failure to do so violates Rule 5-1.1(b). However, the Bar has not demonstrated by clear and convincing evidence that Watson engaged in misrepresentation of either Hooks or Reid, as alleged in the Complaint.

IV. RECOMMENDATIONS AS TO GUILT.

As to Count I

I recommend that the Respondent be found guilty of violating Rule 5-1.1(b), Rules Regulating the Florida Bar. I recommend that the Respondent be found not guilty of violating Rule 4-8.4(c), Rules Regulating the Florida Bar.

As to Count II

I recommend that the Respondent be found guilty of violating Rule 5-1.1(b), Rules Regulating the Florida Bar.

As to Count III

I recommend that the Respondent be found guilty of violating Rule 5-1.1(b), Rules Regulating the Florida Bar. I recommend that the Respondent be found not guilty of violating Rule 4-8.4(c), Rules Regulating the Florida Bar.

As to Count IV

I recommend that the Respondent be found guilty of violating Rule 5-1.1(b), Rules Regulating the Florida Bar.

V. BIFURCATION OF PROCEEDING.

At the final hearing, the Respondent requested a bifurcation of the guilt phase and sanction phase of these proceedings. The referee consents to the bifurcation. Therefore, the parties shall contact the referee to schedule an appropriate sanction phase hearing, and this Report will be supplemented with appropriate findings and recommendations as to sanctions.

VI. RESPONDENT'S ATTORNEY'S FEES.

The Respondent requested attorney's fees in his Motion to Strike. The request should be denied. *The Florida Bar v. Chilton,* 616 So.2d 449 (Fla. 1993).

VII. COSTS.

The referee reserves jurisdiction to award costs as provided in Rule 3-7.6(q), Rules Regulating the Florida Bar, and the Report will be supplemented as to costs.

Submitted this 21 day of May, 2010.

Lawrence J. Semento, Circuit Judge
Referee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the Report of Referee was forwarded by U.S. Mail to The Honorable Thomas D. Hall, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399, that true and correct copies were forwarded by U.S. Mail to the following: James A.G. Davey, Jr., Bar Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300; Kenneth L. Marvin, Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300; and John A. Weiss, Counsel for the Respondent, Weiss & Etkin, 2937 Kerry Forest Parkway, Suite B-2, Tallahassee, Florida 32309 on this 21 day of May, 2010.

Judicial Assistant