IN THE SUPREME COURT OF FLORIDA

(Before a Referee)

THE FLORIDA BAR,

Complainant,

Case No. SC11-1863

v. TFB File No. 2010-50,750(09B)

RUSSELL SAMUEL ADLER,

Respondent.

_____/

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rule 3-7.6, Rules of Discipline, the following proceedings occurred:

On September 21, 2011, The Florida Bar filed its Complaint against Respondent as well as its Request for Admissions in these proceedings. On August 16, 2012, a final hearing was held in this matter and a sanction hearing was held on September 13, 2012. All items properly filed including pleadings, recorded testimony (if transcribed), exhibits in evidence and the report of referee constitute the record in this case and are forwarded to the Supreme Court of Florida.

II. FINDINGS OF FACT

A. Jurisdictional Statement. Respondent is, and at all times mentioned during this investigation 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.

1. Respondent was employed as an attorney by the law firm of Rothstein Rosenfeldt Adler (hereinafter referred to as "RRA"), that was located primarily in Fort Lauderdale, Florida, from February 1, 2005 until its dissolution in or about November 1, 2009.

2. From its inception and until its dissolution, named partners Scott Walter Rothstein and Stuart Alan Rosenfeldt were the only equity shareholders in RRA.

3. At or about the time that respondent joined RRA in February 2005, Mr. Rothstein advised respondent that he would receive equity shares in RRA if respondent met certain goals.

4. Despite his use of the title "Shareholder" and being designated as the vice-president for RRA, respondent testified under oath that he never received any equity shares in RRA in November 2009, October 28, 2010, December 1, 2010 and at the final hearing on August 16, 2012.

5. While employed by RRA, in or about August 2009, respondent purchased a cooperative apartment in New York City for which he obtained financing from Mr. Rothstein and/or entities created and funded by Mr. Rothstein.

6. Respondent borrowed funds and signed a promissory note and mortgage for a loan that represented approximately 90% of the purchase price.

7. Respondent took a payroll advance from RRA for the remaining 10% of the purchase price for which he also signed a promissory note.

8. Respondent believed that the cooperative apartment board had a policy not to approve the purchase of a cooperative apartment where 100% of the purchase price was financed.

9. Although respondent disclosed to the cooperative apartment board that he had borrowed 90% of the purchase price from Mr. Rothstein and/or entities created and funded by Mr. Rothstein, he did not disclose that he had borrowed the other 10% of the purchase price by taking the payroll advance for which respondent had signed a promissory note. The payroll advance was another loan.

10. Further, respondent advised Frank Veilson, a real estate broker involved in the purchase of the cooperative apartment, and the cooperative apartment board through Mr. Veilson, during a telephone conversation and in an email that respondent had a 20% equity share in RRA. This referee found that

although respondent subjectively, at that time, thought that he should have the equity share, he knew that he did not. Respondent's assertions were untrue.

11. As he testified under oath on several occasions, respondent never had any equity shares in RRA either when he communicated with Mr. Veilson or at any other time.

12. In an email, respondent asked Scott Rothstein, an equity shareholder, to direct Irene Stay, the Chief Financial Officer for RRA, to issue a letter to the cooperative apartment board that misrepresented the financial status of respondent in RRA as a shareholder, respondent's finances and respondent's access to additional funds. The letter was issued by Ms. Stay to the cooperative board.

13. Finally, while respondent was employed by RRA, he was the chair of RRA's tort litigation practice group.

14. During respondent's entire tenure managing RRA's tort litigation practice group for approximately 4 years, neither respondent nor any other attorney who participated in personal injury cases associated with the tort litigation cases executed the client settlement statements as required by the Rules Regulating The Florida Bar. None of the settlement statements prepared by respondent's department even contained a space or line for an attorney to sign the settlement statement. Respondent testified that he was responsible for supervising the attorneys in his group and for reviewing the settlement statements.

III. RECOMMENDATIONS AS TO GUILT.

I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar:

A. 3-4.3 The standards of professional conduct to be observed by members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration herein of certain categories of misconduct as constituting grounds for discipline shall not be deemed to be all-inclusive nor shall the failure to specify any particular act of misconduct be construed as tolerance thereof. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the state of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline.

B. 4-1.5(f)(5) In the event there is a recovery, upon the conclusion of the representation, the lawyer shall prepare a closing statement reflecting an itemization of all costs and expenses, together with the amount of fee received by each participating lawyer or law firm. A copy of the closing statement shall be executed by all participating lawyers, as well as the client, and each shall receive a copy.

C. 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.

D. 4-8.4(c) A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

5.1 Failure to Maintain Personal Integrity

5.13 Public reprimand is appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.

7.0 Violations of Other Duties Owed as a Professional

7.2 Suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

V. CASE LAW

I considered the following case law as well as numerous other cases provided by the bar and respondent prior to recommending discipline:

In recent years the Supreme Court of Florida has moved toward stronger sanctions for attorney misconduct. *The Florida Bar v Herman*, 8 So. 3d 1100, 1108

(Fla. 2009). Engaging in conduct involving dishonesty, misrepresentation, fraud, or deceit where the fraudulent misrepresentations are not made to the court warrants suspension. *The Florida Bar v. Schultz*, 712 So. 2d 386, 388 (Fla. 1998). This was an isolated incident in respondent's legal career but his misconduct was not due to neglect, a lapse of judgment or a mere technical violation. Respondent intentionally engaged in conduct involving fraud, deceit and misrepresentation. Therefore, under *Schultz*, a suspension is warranted.

In *The Florida Bar v. Yonker*, 37 Fla. L. Weekly S545 (Fla. Sept. 6, 2012), an attorney was suspended for 60 days for engaging in misconduct involving misrepresentation, solicitation, criminal acts, and the direction of a nonlawyer to engage in solicitation. Mr. Yonker, and another attorney (William Henry Winters) who was prosecuted separately by the bar (the two cases were consolidated for purposes of the final hearing) made secret plans to leave the law firm where they were employed as associates and to open their own law practice, taking with them clients of their former law firm. The two attorneys, personally and through a former paralegal of the law firm, solicited clients of the firm prior to leaving the firm, and stole client files of the firm without permission, made misrepresentations to the firm and the firm's clients. Mr. Winters, who received a harsher sanction of a 91 day suspension, additionally used a third attorney's name on the letterhead of the new law firm despite knowing the third attorney had not joined the new

partnership. Mr. Yonker took client files from his old firm and had information from those files copied for his own personal use. The Supreme Court of Florida found Mr. Yonker's and Mr. Winters' personal use of their former employer's client files constituted acts of criminal theft. Respondent, unlike Mr. Yonker and Mr. Winters, was not charged with engaging in any criminal misconduct. Similar to Mr. Yonker and Mr. Winters, however, respondent engaged in dishonest misconduct for his own personal gain. The misconduct in Mr. Yonker's case greatly exceeded respondent's misconduct. This referee carefully considered the Court's decision in *Yonker*.

In *The Florida Bar v. Renke*, 977 So.2d 579 (Fla. 2008), the Court approved a consent judgment for a 30 day suspension from the practice of law for making misrepresentations in campaign brochures and materials and for accepting $95,800 in unlawful campaign contributions. Judge Renke was removed from the bench. In mitigation, he had no prior disciplinary record, enjoyed a good character or reputation, there was an unreasonable delay in the disciplinary proceedings, there was the imposition of other penalties or sanctions, and he was remorseful. In aggravation, he had a dishonest or selfish motive and there were multiple offenses.

In *The Florida Bar v. Nuckolls*, 521 So. 2d 1120 (Fla. 1988), an attorney was suspended for 90 days without requiring proof of rehabilitation for reinstatement for his involvement in a scheme to fraudulently obtain 100%

financing by misrepresenting the purchase price of condominium units. Mr. Nuckolls represented a real estate partnership that was selling condominium units. Mr. Nuckolls prepared closing documents reflecting a significantly higher purchase price for the units than the sales contracts showed. Lenders made mortgage loans based in part on Mr. Nuckolls' misrepresentations. Additionally, Mr. Nuckolls handled a real estate transaction where he was acting as a land trustee for the purchaser where he agreed to close the sale under terms that were beneficial to the sellers who happened to be his partners and clients. The Court found Mr. Nuckolls' deliberate attempt to perpetrate a fraud on lenders to be serious misconduct. In mitigation, Mr. Nuckolls had no prior disciplinary history and served a number of years in public office.

In *The Florida Bar v. Siegel*, 511 So. 2d 995 (Fla. 1987), two cases against two different attorneys were consolidated. A 90 day suspension without requiring proof of rehabilitation for reinstatement was imposed where the two attorneys deliberately misrepresented facts to a lender in order to secure full financing for the purchase of a building intended as their law office.

This referee specifically found that the cases provided by the bar were distinguishable from respondent's case. All of the cases provided by the bar had more serious aggravating factors and the mitigation in respondent's case was significant. After carefully weighing the facts, this referee found that respondent

has expressed and demonstrated sincere remorse. This referee did not attribute some of the language in the respondent's disciplinary memorandum, drafted by the respondent's advocate, which characterized respondent's misconduct as merely technical, as negating this remorse. Bar counsel acknowledged that respondent was thoroughly cooperative with the bar at all stages of the bar's investigation. It does not appear that anyone was actually harmed by respondent's misconduct. Respondent's misconduct did negatively impact the public's perception of lawyers and the legal profession. Although there were no cases specifically on point, after weighing all of the numerous cases provided by both the bar and respondent which are a part of the record, and the Standards for Imposing Attorney Discipline, I have reached my recommendation.

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

I recommend that Respondent be found guilty of misconduct justifying serious disciplinary measures, and that he be disciplined by:

A. Thirty (30) day suspension without requiring proof of rehabilitation prior to reinstatement to the practice of law; and,

B. Payment of The Florida Bar's costs in these proceedings.

VII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-7.6(k)(1), I considered the following:

A. Personal History of Respondent:

Age: 50

Date admitted to the Bar: October 15, 1986

B. Aggravating Factors: 9.22

(b) dishonest or selfish motive; and,

(i) substantial experience in the practice of law.

C. Mitigating Factors: 9.32

(a) absence of prior disciplinary record;

(e) full and free disclosure to disciplinary board and cooperative attitude toward proceedings;

(g) character or reputation; and

(l) remorse.

D. Prior Discipline: None

VIII. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

I find the following costs were reasonably incurred by The Florida Bar:

Bar Counsel Costs	$1,193.60
Court Reporters' Fees	$1,228.15
Administrative Fee	$1,250.00
TOTAL	**$3,671.75**

It is recommended that such costs be charged to respondent and that interest at the statutory rate shall accrue and be deemed delinquent 30 days after the judgment in this case becomes final unless paid in full or otherwise deferred by the Board of Governors of The Florida Bar.

Dated this _____ day of OCTOBER, 2012.

_____
LUCY CHERNOW BROWN, Referee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Report of Referee has been mailed to The Honorable Thomas D. Hall, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927, and that copies were mailed by regular U.S. Mail to Respondent's Counsel, Fred Haddad, at Fred Haddad, P. A., 1 Financial Plaza, Suite 2612, Fort Lauderdale, Florida 33394-0061, Kenneth L. Marvin, Staff Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300; Kenneth H. P. Bryk, Bar Counsel, The Florida Bar, Orlando Branch Office, The Gateway Center1000 Legion Place, Suite 1625Orlando, Florida 32801-1050; on this _____ day of OCTOBER, 2012.

_____

Lucy Chernow Brown, Referee

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