

IN THE SUPREME COURT OF FLORIDA
(BEFORE A REFEREE)

THE FLORIDA BAR,

Complainant,

v.

STUART L. STEIN,

Respondent.

Case Nos. 65,413 & 65,878

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS: Case number 65,413 was tried before the undersigned on September 14, 1984. Upon the conclusion of the hearing and the communication of my decision to all counsel involved finding respondent guilty of the charges set forth in the bar's complaint, I agreed, at the behest of all parties concerned, to accept appointment as referee in case number 65,878. Subsequently, on September 18, 1984, respondent tendered his written, unconditional guilty plea to the allegations of the complaint filed in case number 65,878. A copy of such unconditional guilty plea is attached hereto as the referee's Exhibit A. Simultaneously with the submission of respondent's unconditional guilty plea (Exhibit A), the parties entered into a written stipulation wherein and whereby the parties agreed, inter alia, to address, at one hearing, one discipline to be imposed in connection with both of the above referred to cases. A copy of such stipulation is attached hereto as the referee's Exhibit B. Such stipulation as it pertained to my considering one discipline in both cases at one hearing was entered into with my express, prior consent. The final hearing at which time I considered the appropriate discipline for my recommendation to this Court was held on January 11, 1985.

At the final hearing in case number 65,413, the respondent appeared, pro se, and the bar was represented by David M. Barnovitz, bar counsel.

At the January 11, 1985 hearing held to determine the appropriate recommendation of discipline in both cases, the respondent appeared in person and by his counsel, Alice Reiter, Esquire and the bar was represented by Richard B. Liss and David M. Barnovitz, both bar counsel.

II. FINDINGS OF FACT AS TO EACH ITEM OF MISCONDUCT OF WHICH THE RESPONDENT IS CHARGED.

As to both cases, I find:

1) Respondent is, and at all times mentioned in the bar's complaints in both cases, was, a member of The Florida Bar subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

As to case no. 65,413, I find:

1) At some time between one (1) and two (2) years prior to September 20, 1983, respondent, securing a signed retainer agreement, undertook representation of one Belle Stone (hereinafter referred to as "Stone") in connection with her claim to recover damages for personal injuries sustained by her in a fall at Boca Raton, Florida department store.

2) Respondent thereafter failed to take any appropriate steps to pursue Stone's claim despite numerous telephone inquiries on behalf of Stone and, without notifying Stone or making any attempt to carry out the obligations he assumed to her, placed the matter in his closed files.

As to case no. 65,878, I find:

1) On or about December 2, 1980, Kenneth and Georgia Honig (hereinafter referred to as "the Honigs") filed suit against Chrisdon Builders and Realty Corporation and other named party defendants (said litigation being hereinafter referred to as the "suit").

2) The Honigs were represented by the Law Office of Ronald E. Kay (hereinafter referred to as "Kay") at the time the suit was filed.

3) On or about February 12, 1982, an order was entered whereby Stuart L. Stein, P.A. (hereinafter referred to as "respondent") was substituted as attorney of record for the Honigs in lieu of Kay.

4) Respondent had been retained by the Honigs to represent them in the suit on or about January 12, 1982.

5) Respondent received the sum of \$2,500.00 as a retained from the Honigs on or about January 12, 1982, to represent them in the suit.

6) On or about March, 1982, respondent attended a deposition with the Honigs.

7) On or about July, 1982, respondent dictated a notice of trial requesting a trial date on the Honigs' suit.

8. The Honigs made numerous inquiries of respondent and his

office, between January 12, 1982 and February, 1983, regarding when the suit would be set for trial.

9) Respondent advised the Honigs that he was awaiting the setting of a trial date by the presiding judge.

10) Respondent took no affirmative action to ascertain the status of the suit including but not limited to review of his office file and the court file.

11) The notice of trial had not, in fact, been filed by respondent.

12) On or about February, 1983, the Honigs orally advised respondent that they wished to discharge him from further representation on the suit

13) On or about February 16, 1983, the Honigs directed a letter to respondent confirming his discharge.

14) The Honigs took the foregoing action due to respondent's failure to apprise them of the status of the suit.

15) A motion to dismiss for lack of prosecution (hereinafter referred to as the "motion"), filed by one of the defendants in the suit, was mailed to respondent on or about February 28, 1983.

16) Respondent, thereafter, provided the Honigs with a copy of the motion.

17) On or about March 8, 1983, the motion was granted after a hearing as to the moving defendant only.

18) On or about April 5, 1983, an order was entered whereby the suit was dismissed as to all defendants on the basis of failure to prosecute pursuant to Rule 1.420(e), Fla. R. Civ. P.

19) On or about September 22, 1983, an order was entered whereby costs were taxed against the Honigs in the sum of \$447.50.

20) Respondent did not file a motion for leave of court to withdraw or enter into a joint stipulation for substitution of counsel with the Honigs' new attorney after his discharge by the Honigs.

21) The Honigs repeatedly requested an accounting from respondent, from the time of his discharge, of the \$2,500 retainer which they had paid to him on or about January 12, 1982.

22) Respondent did not respond to the Honigs request for an accounting until September, 1983.

23) Respondent initiated discussions with the Honigs pertaining to their requested accounting only after a complaint was filed against him with The Florida Bar and the matter had been set for hearing before a grievance committee of The Florida Bar.

24) On the day before the scheduled grievance committee hearing, respondent, through his authorized representative, finally made a full refund of the Honigs' retainer.

III. RECOMMENDATIONS AS TO WHETHER OR NOT THE RESPONDENT SHOULD BE FOUND GUILTY: I make the following recommendations as to the respondent's guilt:

Case No. 65,413

I find that respondent's indifference and consistent failure to carry out the obligations which he assumed to Mr. & Mrs. Stone evidenced by his failure to take any steps to pursue their claim constitutes neglect of a legal matter entrusted to respondent which is a violation of Disciplinary Rule 6-101(A)(3) of the Code of Professional Responsibility. Though Mr. Stein's office was disrupted by a burglary, and the file could not be found, it does not absolve him from his duty to his client.

Case No. 65,878

I find that by reason of his failure to take any action on behalf of Mr. & Mrs. Honig for a period in excess of one year despite repeated inquiries from his clients which failure and neglect resulted in his client's case being dismissed for want of prosecution constitutes neglect of a legal matter entrusted to respondent which is a violation of Disciplinary Rule 6-101(A)(3) of the Code of Professional Responsibility. The aforementioned burglary of his office notwithstanding, I find that the respondent's failure to withdraw from the suit he was retained to prosecute after he was discharged by Mr. & Mrs. Honig constituted a violation of Disciplinary Rule 2-110(b)(4) of the Code which rule mandates that an attorney discharged by a client must withdraw from his employment. All of the aforesaid violations constitute a breach of Disciplinary Rule 1-102(A)(6) of the Code which prohibits conduct adversely reflecting on his fitness

to practice law. Finally, such violations run afoul of Disciplinary Rule 1-102 (A)(1) of the Code and Fla. Bar Integr. Rule, article XI, Rule 11.02(2) both of which proscribe violations by an attorney of the disciplinary rules.

IV. RECOMMENDATIONS AS TO DISCIPLINARY MEASURES TO BE APPLIED:

I recommend that as one discipline to be imposed and cover both of the cases involved herein, the respondent receive a public reprimand and, in addition, that he be suspended from The Florida Bar for a period of ten (10) days.

V. PERSONAL HISTORY:

Respondent, Stuart L. Stein, was admitted to The Florida Bar on September 15, 1977 and is 38 years of age.

VI. STATEMENT AS TO PAST DISCIPLINE:

There is presently pending before the Supreme Court of Florida case number 63,669 in which the Honorable Edward Rogers, Referee, has recommended that respondent receive a public reprimand for respondent's violations of Disciplinary Rules 2-110 (A)(2) and 6-101(A)(3) of the Code of Professional Responsibility. By stipulation heretofore filed with the Supreme Court the respondent withdrew his petition for review of the referee's report. The Court approved such stipulation by order dated September 24, 1984.

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

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

ADMINISTRATIVE COSTS:

Grievance Committee Level (17F83F58)-----	\$ 150.00
Grievance Committee Level (17A83F95)-----	\$ 150.00
Referee Level (Both Cases)-----	\$ 150.00

COURT REPORTER COSTS:

17F83F58-----	\$ 183.20
17A83F95-----	\$ 169.40
Referee Level (9/14/84)-----	\$ 331.50
Referee Level (1/11/85)-----	\$ 429.50

PROCESS SERVICE:

17A83F95-----\$ 30.00

WITNESS FEES:

17F83F58-----\$ 18.00

Total.....\$ 1,611.60

It is recommended that the foregoing itemized costs be charged to the respondent and that interest at the statutory rate shall accrue and be payable beginning thirty (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 **28** day of January, 1985 at Miami, Dade County, Florida.



ELLEN J. MORPHONIOS Referee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing referee's report was sent to David M. Barnovitz and Richard B. Liss, Bar Counsel, The Florida Bar, 915 Middle River Drive, Suite 602, Fort Lauderdale, Florida 33304, and Alice Reiter, Esquire, Attorney for respondent, 1136 S.E. 3rd Avenue, Fort Lauderdale, Florida 33316, by regular mail, on this _____ day of January, 1985.



ELLEN J. MORPHONIOS, Referee