

II. FINDINGS OF FACT:

At the Final Hearing, The Florida Bar introduced the testimony of R. James Knox, Vice President of the Attorney Title Insurance Fund and a member of The Florida Bar. Respondent testified on his own behalf and introduced no other witnesses. Based upon this testimony, the former testimony transcribed at the grievance committee hearing, the documentary evidence submitted, and the stipulation as to facts, I find:

1. That Respondent, is and at all times hereinafter mentioned was, a member of The Florida Bar, subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

2. That at all times hereinafter mentioned, Respondent was a member of the Attorney Title Insurance Fund. (Hereinafter referred to as the "Fund").

3. That during or about April, 1983 Respondent undertook the representation of Kramer Homes, Inc. (hereinafter referred to as "Kramer Homes") and its President, Larry Griggs in a bankruptcy matter in the United States Bankruptcy Court.

4. That on or about April 1, 1983, Respondent filed a bankruptcy petition on behalf of Kramer Homes in the United States Bankruptcy Court.

5. That at the time of Respondent's filing of the bankruptcy petition on behalf of Kramer Homes, Respondent was aware or shortly became aware of an existing and outstanding 1980 Capital Bank mortgage on one of the properties held by Kramer Homes, the Woods Landing Condominium located in Dade County, Florida.

6. That during or about May 1983, Respondent undertook the representation of Kramer Homes and its President, Larry Griggs, in the sale of condominium Unit No. 37 located in the Woods Landing Condominium.

7. That Kramer Homes, by and through its President, Larry Griggs and Attorney, the Respondent, negotiated the sale of Unit 37 of Woods Landing Condominium to Jorge Emilio Sa Zacarias and Maria Hasbun de Sa.

8. That the aforementioned buyers of Unit 37 of Woods Landing Condominium were not represented by counsel during the sale transaction.

9. That on or about May 18, 1983, Respondent prepared a Closing Statement on the sale of Unit 37 of Woods Landing Condominium listing Kramer Homes as seller and Jorge Emilio Sa Zacarias and Maria Hasbun de Sa as buyer with a purchase price of \$80,000.

10. That the Closing Statement was approved by Larry Griggs for Kramer Homes and the aforementioned buyers.

11. That on or about May 19, 1983, Respondent prepared a Mechanic Lien Affidavit on Unit No. 37.

12. That said Mechanic Lien Affidavit was executed by Larry Griggs for Kramer Homes and notarized by Respondent.

13. That on our about May 19, 1983, Respondent prepared a Warranty Deed naming Kramer Homes as grantor and Jorge Emilio Sa Zacarias and Maria Hasbun de Sa as grantees of Unit 37 of Woods Landing Condominium.

14. That the grantor Kramer Homes, by and through Larry Griggs, and the grantees signed, sealed and delivered the Warranty Deed and Respondent notarized the same.

15. That on or about May 19, 1983, Respondent issued Attorney Title Insurance Fund Policy No. OP-511951 certifying and insuring that Jorge Emilio Sa Zacarias and Maria Hasbun de Sa had obtained good and marketable title on the property known as Unit 37 of Woods Landing Condominium.

16. That although Attorney Title Insurance Fund Policy OP-511951 was issued May 19, 1983, Respondent listed the effective date of said policy as April 1st, 1983.

17. That Respondent did not record the Warranty Deed he prepared and notarized on Unit 37 of Woods Landing Condominium on May 19, 1983 until October 20, 1983.

18. That Respondent, in preparing the aforementioned Closing Statement, Mechanics Lien Affidavit, Warranty Deed and Attorney Title Insurance Fund Policy OP-511951 on Unit 37 of Woods Landing Condominium on or about May 18 and May 19, 1983, made no reference to the existing and outstanding 1980 Capital Bank mortgage described in Paragraph 5 above.

19. That on or about May 18, 1983, Respondent had actual notice of the existing and outstanding 1980 Capital Bank mortgage described in Paragraph 5 above.

20. That Respondent, in preparing the aforementioned Closing Statement, Mechanics Lien Affidavit, Warranty Deed and Attorney Title Insurance Fund Policy OP-511951 on Unit 37 of Woods Landing Condominium on or about May 18 and May 19, 1983, made no reference to the Bankruptcy Petition which Respondent had filed on behalf of Kramer Homes on or about April 1st, 1983 as described in Paragraphs 3 and 4 above.

21. That, it appears from the record, good and marketable title to Unit 37 of Woods Landing Condominium could not have been conveyed to the buyer because of the existing and outstanding 1980 Capital Bank mortgage.

22. That, it appears from the record, good and marketable title to Unit 37 of Woods Landing Condominium could not have been conveyed to any buyer on or about May 19, 1983 because Kramer Homes was in bankruptcy proceedings initiated by and through Respondent on or about April 1st, 1983 and all of Kramer Homes holdings, which included Unit 37 of Woods Landing Condominium, were vested in the bankruptcy estate.

23. That as a result of the foregoing, the Fund had to pay \$80,000 to Jorge Emilio Sa Zacarias and Maria Hasbun de Sa, the insured buyers of Unit 37 of Woods Landing Condominium.

24. That during or about May 1983, Respondent undertook the representation of Kramer Homes and its President, Larry Griggs, in the sale of condominium Unit No. 38 located in the Woods Landing Condominium.

25. That Kramer Homes, by and through its President, Larry Griggs and Attorney, the Respondent, negotiated the sale of Unit 38 of Woods Landing Condominium to Alfonso Eduardo Cader.

26. That the aforementioned buyer of Unit 38 of Woods Landing Condominium was not represented by counsel during the sale transaction.

27. That on or about May 18, 1983, Respondent prepared a Closing Statement on the sale of Unit 38 of Woods Landing Condominium listing Kramer Homes as seller and Alfonso Eduardo Cader as buyer with a purchase price of \$81,200.

28. That the Closing Statement was approved by Larry Griggs for the seller, Kramer Homes and Alfonso Eduardo Cader as the buyer.

29. That on or about May 19, 1983, Respondent prepared a Mechanic Lien Affidavit on Unit 38 of the Woods Landing Condominium.

30. That said Mechanic Lien Affidavit was executed by Larry Griggs for Kramer Homes and notarized by Respondent.

31. That on or about May 19, 1983, Respondent prepared a Warranty Deed naming Kramer Homes as grantor and Alfonso Eduardo Cader as grantee of Unit 38 of Woods Landing Condominium.

32. That the grantor, Kramer Homes, by and through Larry Griggs, and the grantee, Alfonso Eduardo Cader, signed, sealed and delivered the Warranty Deed and Respondent notarized the same.

33. That on or about May 19, 1983, Respondent issued Attorney Title Insurance Fund Policy No. OP-511952 certifying and insuring that Alfonso Eduardo Cader obtained good and marketable title on the property known as Unit 38 of the Woods Landing Condominium.

34. That although Attorney Title Insurance Fund Policy OP-511952 was issued May 19, 1983, Respondent listed the effective date of said policy as April 1st, 1983.

35. That Respondent did not record the Warranty Deed he prepared and notarized on Unit 38 of Woods Landing Condominium on May 19, 1983 until October 20, 1983.

36. That Respondent, in preparing the aforementioned Closing Statement, Mechanics Lien Affidavit, Warranty Deed and Attorney Title Insurance Fund Policy OP-511952 on Unit 38 of Woods Landing Condominium on or about May 18 and May 19, 1983, made no reference to the existing and outstanding 1980 Capital Bank mortgage described in Paragraph 5 above.

37. That on or about May 18, 1983, Respondent had actual notice of the existing and outstanding 1980 Capital Bank mortgage described in Paragraph 5 above.

38. That Respondent, in preparing the aforementioned Closing Statement, Mechanics Lien Affidavit, Warranty Deed and Attorney Title Insurance Fund Policy OP-511952 on Unit 38 of Woods Landing Condominium on or about May 18 and May 19, 1983, made no reference to the Bankruptcy Petition which Respondent had filed on behalf of Kramer Homes on or about April 1st, 1983 as described in Paragraph 3 and 4 above.

39. That, it appears from the record, good and marketable title to Unit 38 of Woods Landing Condominium could not have been conveyed to any buyer because of the outstanding Capital Bank mortgage.

40. That, it appears from the record, good and marketable title to Unit 38 of Woods Landing Condominium could not have been conveyed to the buyer on or about May 19, 1983 because Kramer Homes was in bankruptcy proceedings initiated by and through Respondent on or about April 1st, 1983 and all of Kramer Homes holdings, which included Unit 38 of Woods Landing Condominium, were vested in the bankruptcy estate.

41. That as a result of the foregoing, the Fund had to pay \$81,200 to Alfonso Eduardo Cader, the insured buyer of Unit 38 of Woods Landing Condominium.

III. RECOMMENDATION AS TO GUILT:

Respondent has urged that he is not guilty of any ethical wrongdoing and admits to using "bad business judgment" in this particular matter. The Florida Bar argues that Respondent knowingly took the action outlined above which resulted in a misrepresentation to the Attorney Title Insurance Fund which adversely reflected upon Respondent's fitness to practice law. I find that there is clear and convincing evidence of guilt of Respondent in that he acted in violation of Disciplinary Rules 1-102(A)(4) and 1-102(A)(6) of the Code of Professional Responsibility.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES:

The Florida Bar's official position with respect to discipline is that Respondent receive a Public Reprimand to be published in the Southern Reporter. The Florida Bar would not be opposed to a suspension for less than ninety (90) days. Further, The Florida Bar has suggested that restitution to the Attorney Title Insurance Fund and a restriction on Respondent's ability to write title insurance be considered.

Respondent has urged that he receive no discipline in that he did not violate the Code and that any form of forced restitution would effectively suspend him from practice indefinitely as he is not able to pay the \$161,200.00 which the Fund paid out. Also, a restriction on his ability to write title insurance would eliminate the major portion of his law practice.

In finding Respondent guilty of violating Disciplinary Rules 1-102(A)(4) and 1-102(A)(6), I considered the violations to be serious because they involved a knowing misrepresentation. Respondent's defense was that the buyers knew of the possible defects to title and based on that, the Fund should not have paid off the claim. However, the Fund did not know of the possible defects because of Respondent's misrepresentation and that is why it paid the claim for \$161,200.00.

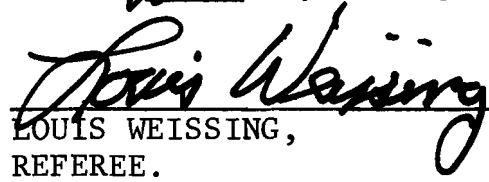
Respondent's "defense" that the buyers knew does not erase the misrepresentation to the Fund. Respondent has admitted that he succumbed to pressures of a third party while undergoing personal problems. This cannot be taken wholly in mitigation. It casts an adverse reflection on Respondent's fitness to practice law. This case involved more than "bad business judgment" on the part of Respondent. Because of the seriousness of the misrepresentation and the injury it caused, I recommend that Respondent be suspended from the practice of law for a period of sixty (60) days. Were it not for Respondent's clean record and cooperation with the Bar, I would have recommended an even greater sanction. Examining the three goals of discipline, that is, to protect society, to deter other attorneys from committing similar violations and to be fair to Respondent, I believe a sixty (60) day suspension is in order. As far as restitution to the Fund, I find that is a civil matter between the Fund and Respondent. As far as a restriction on Respondent's ability to write title insurance, I recommend none as this would be an unreasonable restriction because of Respondent's type of practice.

V. COSTS:

I find that the following costs were reasonably incurred by The Florida Bar and should be assessed against Respondent to be payable within 30 days after the Supreme Court's acceptance of this Report.

Grievance Committee Transcript December 4, 1984	\$ 467.69
Administrative Costs Grievance Committee Level.....	150.00
Referee Transcript	323.22
Administrative Costs Referee Level.....	<u>150.00</u>
TOTAL	\$ 1,090.91 =====

Respectfully submitted this 23rd day of August, 1985.



LOUIS WEISSING,
REFEREE.

CC: James L. Wall, Jr. Esq., Respondent

Louis Thaler, Esq., Bar Counsel

CERTIFICATE OF SERVICE

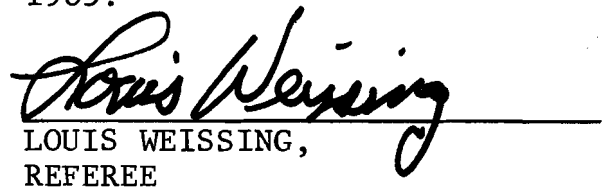
I HEREBY CERTIFY that the original Report of Referee was mailed to Chief Justice Joseph A. Boyd, Jr. at the Supreme Court Building, Tallahassee, Florida on August 23, 1985 and that a true and correct copy of said Report was mailed to:

Louis Thaler, Esq.
Bar Counsel
The Florida Bar
444 Brickell Avenue, Suite 211
Miami, Florida 33131

and to James L. Wall, Jr., Esq., Respondent
1275 Bluebird Avenue
Miami Springs, Florida 33166

on August 23, 1985.

DATED this August 23, 1985.



LOUIS WEISSING,
REFEREE