

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,)
Complainant,)
v.)
BURTON B. LOEBL,)
Respondent.)

The Florida Bar File
No. 86-19,041(11L)
(formerly 11L86M90)

Supreme Court
No. 70,858

FILED
JAN 14 1988
CLERK, SUPREME COURT

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS: Pursuant to the undersigned being duly appointed as Referee for the Supreme Court of Florida to conduct disciplinary proceedings as provided for by Rule 3-7.5 of the Rules Regulating The Florida Bar, all of the pleadings, notices, motions, orders, transcripts and exhibits are forwarded with this report and the foregoing constitutes the record of this case.

The following attorneys appeared as counsel for the parties:

On behalf of The Florida Bar: Louis Thaler
Bar Counsel
Suite 211 Rivergate Plaza
444 Brickell Avenue
Miami, Florida 33131
(305) 377-4445

On behalf of the Respondent: Burton Loebel
13899 Biscayne Boulevard
P.O. Drawer L
N. Miami Beach, FL 33181
(305) 945-7444

This matter was initially set for Final Hearing on October 1, 1987. By joint agreement of Bar Counsel and Respondent this matter was continued until November 20, 1987 in order to allow the introduction of the live testimony of [REDACTED] the main and complaining witness in this case. On November 19, 1987, a conference call occurred between this Referee, Bar Counsel and Respondent. During the conference call Respondent indicated that he had a medical problem which required the immediate attention of an ophthalmologist. Respondent further indicated that he was unable to proceed at that time and had an appointment with Dr. Lewis

Dann on Friday, November 20, 1987 at 9:00 A.M. The Final Hearing was continued and reset for Thursday, December 3, 1987 at 2:00 P.M. at the offices of The Florida Bar. Since venue rests in Dade County, the Final Hearing of this matter has always been set in Dade County.

On December 3, 1987 at approximately 1:45 P.M., my Judicial Assistant Lois McGlashon received a phone call from Respondent indicating that he had a car trouble and was travelling to the Broward County Courthouse for the purpose of the Final Hearing. Ms. McGlashon advised Respondent that the matter was not set in Broward County, but was set at the offices of The Florida Bar, in Dade County. As the Respondent did not appear as scheduled at 2:00 P.M. on December 3, 1987, this Referee, having been apprised of Respondent's phone call with Ms. McGlashon, waited until 2:30 P.M. for Respondent to appear. As Respondent did not appear at 2:30 P.M., this Referee proceeded to conduct the Final Hearing. Respondent did appear at approximately 3:00 P.M. and was afforded the full opportunity to cross-examine The Florida Bar's two witnesses and to present his defense.

At the outset of the Final Hearing, this Referee, upon ore tenus motion of Bar Counsel for an Order Deeming Matters Admitted, entered an Order Deeming Matters Admitted based upon Respondent's failure to respond to The Florida Bar's Request for Admissions served upon Respondent on August 17, 1987. However, due to the serious nature of the offense involved herein, this Referee proceeded to hear The Florida Bar's case in full.

II. FINDINGS OF FACT:

Based on the testimony of The Florida Bar's two witnesses, complaining witness [REDACTED] and Staff Auditor Carlos J. Ruga, along with exhibits introduced by The Florida Bar and the testimony of Respondent, I find the following facts in this case:

1. That the Respondent, Burton B. Loebel, 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 during or about 1982, Respondent represented [REDACTED] (hereinafter referred to as "[REDACTED]") in a dissolution of marriage proceeding against her husband.

3. That [REDACTED] paid Respondent approximately \$20,000.00 in attorneys fees during the period of Respondent's representation.

4. That during or about September 1982, the dissolution of marriage proceeding was settled and [REDACTED]'s husband agreed to pay \$33,624.49 to [REDACTED].

5. That on or about September 7, 1982, the husband's attorney, Richard B. Adams, disbursed a trust account check in the amount of \$33,624.49 to "[REDACTED] [REDACTED] and Burton B. Loebel, Her Attorney."

6. That Respondent deposited the settlement check in his trust account.

7. That per the fee agreement between Respondent and [REDACTED] Respondent was to take \$5,000.00 of the \$33,624.49 as the balance of his attorney's fee.

8. That on or about September 13, 1982, Respondent disbursed \$1,000.00 to [REDACTED].

9. That from the period September 13, 1982 until August 1, 1982, [REDACTED] continuously requested that Respondent disburse the balance of the settlement proceeds due her, amounting to approximately \$27,000.00.

10. That Respondent advised [REDACTED] that he did not have the funds.

11. That Respondent advised [REDACTED] that he had used the funds to resolve troubles he was having with his ex-wife and the Internal Revenue Service.

12. That on or about August 1, 1982, Respondent gave [REDACTED] a promissory note in the amount of \$27,000.00, said amount representing the funds due [REDACTED] as the balance of settlement proceeds owing from the dissolution of marriage proceeding.

13. That on or about November 15, 1983, Respondent gave [REDACTED] a check drawn on Intercontinental Bank, in the amount of \$270.00, labeled "Burton B. Loebel, Attorney at Law, Special Account," which was dishonored upon presentation to the bank.

14. That on or about May 18, 1984, Respondent gave [REDACTED] a check drawn on County Bank, in the amount of \$270.00 labeled "Burton B. Loebel, Attorney at Law," which was dishonored upon presentation to the bank.

15. That on or about December 28, 1984, Respondent gave [REDACTED] a check drawn on Commercial Bank & Trust Company in the amount of \$1,000.00, labeled "Burton B. Loebel, Special Account," which was dishonored upon presentation to the bank.

16. That on or about May 16, 1985, Respondent gave [REDACTED] a check drawn on Commercial Bank & Trust Company, in the amount of \$507.48, labeled "Burton B. Loebel," which was dishonored upon presentation to the bank.

17. That on or about November 11, 1985, Respondent gave [REDACTED] a check drawn on County National Bank of South Florida, in the amount of \$507.48, labeled "Burton B. Loebel, Attorney at Law," which was dishonored upon presentation to the bank.

18. That Respondent has not properly accounted for the funds to [REDACTED] or The Florida Bar.

III. RECOMMENDATIONS AS TO GUILT: I find clear and convincing evidence that Respondent has violated Disciplinary Rules 1-102(A)(4) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation); 1-102(A)(6) (A lawyer shall not engage in any other conduct that adversely reflects on his fitness to practice law); 5-104(A) (A lawyer shall not enter into a business transaction with a client if they have differing interest therein); 9-102(A) and (B) (Preserving identity of funds and property) of the Code of Professional Responsibility and Rule 11.02(4) (Trust funds and fees) of the Integration Rules of The Florida Bar.

IV. RECOMMENDATIONS AS TO THE DISCIPLINARY MEASURES: This case involves misappropriation and misuse of funds belonging

to a client, ██████████ ██████████, in the amount of approximately \$27,000. Based on the case law cited at the Final Hearing and detailed in The Florida Bar's Memorandum of Law, I recommend that Respondent be disbarred from the practice of law in the State of Florida. I expressly recommend that the disbarment period be for five (5) years and the Respondent not be allowed to seek readmission until he has made full restitution to ██████████ ██████████ and/or, the Client Security Fund of The Florida Bar, should any claims be paid.

As cited by The Florida Bar, this recommendation is in accord with The Florida Bar v. Dreyer, 493 So.2d 1025 (Fla. 1986); The Florida Bar v. Rodriguez, 489 So.2d 726 (Fla. 1986); The Florida Bar v. Davis, 474 So.2d 1165 (Fla. 1985); and The Florida Bar v. Rodman, 474 So.2d 1176 (Fla. 1985).

V. RECOMMENDATION WITH REGARD TO COSTS: I find the following costs were reasonably incurred by The Florida Bar and recommend that these costs be assessed against Respondent. It is further recommended that execution issue with interest at a rate of twelve percent (12%) per annum to accrue on all costs not paid within 30 days of entry of the Supreme Court's final order, unless time for payment is extended by the Board of Governors of The Florida Bar.

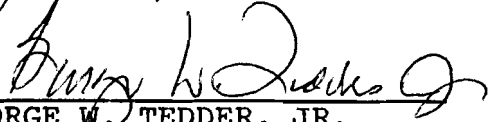
Grievance Committee Level:

Administrative Cost [Rule 3-7.5(k)(5)]	\$ 150.00
Grievance Committee Hearing transcript of April 21, 1987	279.35
Grievance Committee Hearing transcript of April 28, 1987	326.85

Referee Level:

Administrative Cost [Rule 3-7.5(k)(5)]	150.00
Final Hearing transcript of December 3, 1987	291.47
Staff Auditor Carlos J. Ruga investigation	<u>2,117.75</u>
TOTAL	<u>\$ 3,315.42</u> =====

Dated this 11 day of January, 1988.


GEORGE W. TEDDER, JR.
Referee

cc: Louis Thaler
Assistant Staff Counsel
Burton B. Loebel, Respondent

Assistant Staff Counsel
Burton B. Loebel, Respondent