

Supreme Court of Florida

No. 71,886

THE FLORIDA BAR, Complainant,

vs .

CHRISTOPHER R. FERTIG, Respondent.

[November 16, 1989]

PER CURIAM.

Pursuant to article V, section 15, Florida Constitution, we review the disciplinary proceedings against Christopher R. Fertig.

The Bar brought charges against Fertig in 1988, following his 1986 plea of nolo contendere to violations of Florida's Racketeer Influenced and Corrupt Organizations (RICO) act. Adjudication of guilt was withheld. The gist of the charges was that he helped a law partner and a client launder money for a drug-smuggling scheme. A referee recommended that Fertig be found guilty of violating two provisions of the former Integration Rule: rule 11.02(3)(a), for committing an act contrary to honesty, justice, or good morals, and rule 11.02(3)(b), for committing a felony. Mitigating these violations, the referee found, was Fertig's cooperation with authorities and his having "turn[ed] his life around since he committed these illegal acts." The referee recommended that Fertig be suspended from the practice of law for twelve months with no proof of rehabilitation required.

The Board of Governors of the Florida Bar reviewed the referee's report and approved all but the proposed sanction. Because of the amount of time since the illegal acts occurred (the conspiracy ran from 1978 to 1983) and because the referee found Fertig to be rehabilitated, the Bar petitions this Court for a ninety-day suspension. Fertig cross-petitions, arguing that a public reprimand is appropriate. Neither side disputes the recommendations of guilt.

Fertig now tries to characterize his participation as minor and his plea to the charges as coerced, but the record does not support these conclusions. Rather, it shows that Fertig knowingly broke the law, and that he was at times compensated for this illegal activity.¹

On the other hand, there is much in mitigation. When the misconduct occurred, Fertig was relatively new in the practice of law. There is no evidence that he ever imported drugs into the United States, and it is possible that initially his involvement in the money-laundering scheme may have been unknowing. He was under the domination of his employer, James A. Dolan, who was a knowing participant in the crime. As the referee and the Bar noted, Fertig cooperated with investigators and has been rehabilitated. The acts for which he was charged occurred between 1978 and 1983, and his disciplinary record was spotless before and since that time. Further, a number of character witnesses appeared at Fertig's hearing and testified to his honesty, his abilities as a lawyer, and his remorse. Of particular significance is the fact that Dolan received only a

¹ In a statement given to investigators he told how he and other couriers were allowed to keep the "overage" -- that is, any money Gerald Smith, the owner of the funds, did not know about. According to Fertig, Smith only knew approximate amounts in round numbers. If Smith thought \$10,000 was being sent to an offshore bank and the actual amount was \$10,400 the courier would keep \$400.

ninety-day suspension.² The Florida Bar v. Dolan, 452 So.2d 563 (Fla. 1984).

We agree with the Bar that Fertig must be suspended. Indeed, were it not for the significant mitigation, Fertig's misconduct would warrant more severe discipline. We accept the Bar's recommendation of a ninety-day suspension.

Christopher R. Fertig is suspended from the practice of law for ninety days. This suspension will become effective on December 18, 1989, thereby giving Fertig thirty days to take the necessary steps to protect his clients. He shall accept no new business after the date of this opinion. Costs are assessed against Fertig in the amount of \$2,003.01, for which sum let execution issue.

It is so ordered.

OVERTON, McDONALD, SHAW and BARKETT, JJ., Concur
GRIMES, J., Dissents with an opinion, in which EHRLICH, C.J. and KOGAN, J., Concur

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED. THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THIS SUSPENSION.

² Smith was Dolan's client, though Fertig did do some civil work for Smith. It was Dolan who told Fertig to transport the money out of the country, according to Fertig. Dolan was never charged, due to his having received immunity in return for his testimony against Smith.

GRIMES, J., dissenting.

Fertig admitted that on a number of occasions he transported large sums of money out of the United States and deposited it in foreign banks in order to hide the ownership and source of the funds and knew this was illegal. In addition, he admitted that he knew that Gerald Smith, the owner of the funds and a client of his law firm, was a drug smuggler.

The fact that his employer, Dolan, who brought Fertig into the illegal scheme also received only a ninety-day suspension no doubt weighs heavily in the majority's conclusion to impose no greater discipline upon Fertig. However, the extent of Dolan's discipline cannot diminish the gravity of Fertig's conduct. Furthermore, there may have been difficulties of proof or other considerations which caused the Bar to agree to Dolan's discipline upon the entry of a conditional guilty plea for consent judgment. The F_____ v. Dolan, 452 So.2d 563 (Fla. 1984).

At the very least, I would approve the referee's recommendation of a twelve-month suspension. Except for the mitigating circumstances, Fertig should be disbarred.

EHRlich, C.J., and KOGAN, J., Concur

Petition and Cross-Petition for Review of an Original Proceeding -
The Florida Bar

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