

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Case No. SC06-1099

v.

TFB File No. 2004-01,090(2A)

PHILLIP TIMOTHY HOWARD,

Respondent.

_____ /

REPORT OF THE REFEREE ACCEPTING CONSENT JUDGMENT

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 June 6, 2006, The Florida Bar filed its Complaint against Respondent as well as its Request for Admissions in these proceedings. Respondent filed his answers to both the Complaint and Request for Admissions on July 13, 2006. Respondent then served his Request for Admissions and Interrogatories on Complainant on July 14, 2006 and July 17, 2006, respectively, which Complainant answered on October 19, 2006. Case management conferences were held on August 18, 2006 and February 12, 2007. All of the aforementioned pleadings, responses thereto, exhibits received in evidence, and this

Report 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. Respondent and Environmental Properties, Inc., of which Mr. Robert Ryals of Robert Ryals Realty (hereinafter “Ryals” or “Realty”) was a participant, but not a principal of the corporation, entered into a professional relationship sometime prior to July 2000; this relationship began with Respondent representing Environmental Properties, Inc.’s interest in third-party construction contracts. Commissions were paid to this client and deposited into Respondent’s IOTA Trust Account beginning July 10, 2000. Ryals requested his share of the commissions remain in the IOTA Trust Account. Respondent clarified in writing that he was acting only in a clerical capacity and was not responsible for tax obligations of these funds and was not representing Ryals pertaining to these funds.

On or about November 28, 2000, pursuant to Ryals’ request Respondent opened an interest bearing money market trust account for Ryals. Respondent unwittingly failed to identify this money market account as a trust account, as a result,

this account was not clearly labeled and designated as a trust account, in violation of Rules 4-1.15 and 5-1.2(b), Rules Regulating The Florida Bar.

After several inflated requests, ranging from double to nearly six times the amount due, for reimbursement by Ryals in the beginning of 2004, Respondent reviewed all relevant documents to create a complete accounting. Respondent also had his accountant review the documents and shared that accounting with Ryals' accountant. Respondent tried to resolve these claims prior to Ryals filing the complaint that led to this current matter, offering significantly more than was owed, but to no avail.

Audits of Respondent's two trust accounts—an IOTA trust account and a money market trust account—were conducted by The Florida Bar Branch Auditor on July 22, 2004 and January 27, 2005, which found no funds were missing.

The Florida Bar's audit disclosed that Respondent failed to supervise the staff that had unwittingly, improperly posted a combined deposit of over \$300,000 as of July 11, 2000, on his IOTA Trust Account ledger when this balance was from two distinct deposits, in violation of Rules 4-1.15 and 5-1.2(b)(6), Rules Regulating The Florida Bar.

At Ryals' request, Respondent paid various bills or debts owed by Ryals from the money market trust account; however, Respondent failed to supervise the staff that had used all the numbered checks and then issued unnumbered checks, in violation of Rules 4-1.15 and 5-1.2(b)(3), Rules Regulating The Florida Bar.

Upon audit by The Florida Bar, it was found that Respondent had also not followed minimum trust accounting requirements, in that Respondent failed to supervise the staff that had used the checks from the IOTA Trust Account and the money market trust account out of sequential order, in violation of Rules 4-1.15 and 5-1.2(b)(3), Rules Regulating The Florida Bar.

In June of 2001, when Ryals was not being represented by Respondent but in fact Ryals, who had over 30 years of successful experience in the real estate business as an agent and broker, was representing Respondent in a costly real estate transaction, Ryals proposed deferring his commission as an interest free loan and advanced closing costs, to be paid back over an undefined period of time. Not recognizing at the time that Ryals could be considered a client, other than writings from Ryals documenting that it was interest free and to be paid over time, Respondent did not create a specific loan agreement which identified payment terms or interest for this business transaction, in violation of Rule 4-1.8(a), Rules Regulating The Florida Bar.

Within the January 2005 audit by The Florida Bar, it was found that Respondent, upon closing both the money market and the trust account in June of 2001, had over paid Ryals and this resulted in insufficient funds for the final check written. Within a day of Respondent being aware of this overdraft, it was satisfied with the bank. Though this overdraft was satisfied with the bank, Respondent had not authorized and requested the

bank to notify Staff Counsel, The Florida Bar of the overdraft, in violation of Rules 4-1.15 and 5-1.2(c)(4), Rules Regulating The Florida Bar.

Though Respondent had closed the trust and money market accounts in mid-Summer of 2002, the audit of the loans and real estate commission confirmed that there was still money owed by Respondent to Ryals on the interest free loans arranged by Ryals and confirmed in his writings to Respondent.

However, the parties have successfully reached a settlement and, as of February 12, 2007, all monetary issues between the parties are satisfied. Respondent waived significant fees still owed to him by Environmental Properties, Inc.

III. RECOMMENDATIONS AS TO GUILT

I recommend that Respondent be found guilty of violating Rules 4-1.8(a) (Business Transactions with or Acquiring Interest Adverse to Client), 4-1.15 (Compliance with Trust Accounting Rules), 5-1.2(b)(3) (Checks Numbered Consecutively), 5-1.2(c)(4) (Bank Notification of Insufficient Funds) and 5-1.2(b)(6) (Ledger Showing Individual Receipts, Disbursements or Transfers) of the Rules Regulating The Florida Bar.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

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

1. Public reprimand
2. 18 months probation, which shall include:

- a. participation with Law Office Management Assistance Services;
- b. attendance at the Trust Accounting Workshop;
- c. semi-annual trust accounting reports; and
- d. payment of The Florida Bar costs.

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-7.6(k)(1), I considered the following personal history of Respondent, to wit:

Age: 45
 Date admitted to the Bar: May 29, 1987
 Prior Discipline: Public Reprimand, 2003;
 Public Reprimand and Probation, 2005

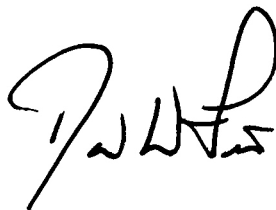
VI. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

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

Administrative Costs	\$ 1,250.00
Investigative Costs and Expenses _____	<u>51.30</u>
TOTAL	\$ 1,301.30

It is recommended that such costs be charged to Respondent and that interest at the statutory rate shall accrue and that should such cost judgment not be satisfied within thirty days of said judgment becoming final, Respondent shall be deemed delinquent and ineligible to practice law, pursuant to R. Regulating Fla. Bar 1-3.6, unless otherwise deferred by the Board of Governors of The Florida Bar.

Dated this 26th day of February, 2007.



The Honorable David William Fina
Circuit Judge Judge/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, Supreme Court Building, Tallahassee, Florida 32399-1927, and that copies were furnished by regular U.S. Mail to KENNETH LAWRENCE MARVIN, Staff Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300; KRISTIN ANN GODWIN, Bar Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300; and PHILLIP TIMOTHY HOWARD, Respondent, whose record Bar address is 8511 Baul Headley Road, Suite 400 , Tallahassee, FL 32312-5131, on this ____ day of _____, 2007.

Millie J. Schneider, Judicial Assistant