

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

JILL BETH NEWMAN,

Respondent.

**Supreme Court Case
No. SC09-37**

**The Florida Bar File
Nos. 2008-50,382(15E)
2008-50,586(15E)**

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

The Florida Bar filed its complaint with the Supreme Court of Florida on or about January 13, 2009. Thereafter, the undersigned was appointed to preside as referee in this proceeding by the Chief Judge of the Seventeenth Judicial Circuit. The parties have presented to me a Conditional Guilty Plea for Consent Judgment, which has been approved by The Florida Bar Board of Governors' designated reviewer. After due deliberation, I have determined to recommend that respondent's Conditional Guilty Plea for Consent Judgment be approved, for the reasons set forth herein. The pleadings and all other papers filed in this cause, which are forwarded to the Supreme Court of Florida with this report, constitute the entire record.

During the course of these proceedings, respondent appeared pro se and The Florida Bar was represented by Ronna Friedman Young.

II. FINDINGS OF FACT:

A. Jurisdictional Statement: Respondent is, and at all times mentioned during this investigation was, a member of The Florida Bar, and subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida.

B. Narrative Summary:

1. In July 2006, Hobbs Properties, Inc. entered into 4 contracts to sell 4 pieces of real property located in Panama City, Bay County, Florida.

2. Respondent represented the purchasers.

3. Respondent's law firm, Jill Beth Newman, P.A., was designated as the escrow agent to hold the 4 initial deposits.

4. The purchasers were a series of trust entities, e.g., "5109 Trust and &/or assigns."

5. Respondent prepared a series of deposit receipts, referencing each transaction, and provided these receipts to the seller's realtor.

6. Respondent represented that she had received a deposit of \$2,500.00 for each piece of property and further stated that the funds were in her trust account.

7. Accordingly, respondent represented that she was holding a total of \$10,000.00.

8. Each deposit receipt stated in part: “This will confirm that my office is in receipt of the amount of Two Thousand Five Hundred and 00/100ths (\$2,500.00) Dollars which represents the deposit held in my Trust Account for the above referenced purchase and sale.” (Hobbs Properties, Inc. was only able to locate 3 out of the 4 deposit receipts). Copies of 3 of the 4 receipts were attached to the complaint as Composite **Exhibit A**.

9. The transactions failed to close and Hobbs Properties, Inc. made a demand for the deposits.

10. When Hobbs Properties, Inc. received no response from respondent, a further demand was made through counsel, Edwin F. Blanton.

11. On or about February 6, 2007, Blanton sent an e-mail to respondent demanding the \$10,000.00. A copy of the e-mail was attached to the complaint as **Exhibit B**.

12. A few days later, respondent called him and represented that the funds were in her trust account but stated that no trusts had ever been formed to act as the purchasers.

13. By e-mail dated February 9, 2007, Blanton made an additional demand for the \$10,000.00. A copy of the e-mail was attached to the complaint as **Exhibit C**.

14. Respondent never responded to that e-mail or to further attempts by Blanton to contact her.

15. Brian Hobbs eventually filed a bar grievance against respondent.

16. Respondent's bar address of record was her closed office, but the bar was able to locate a residence address through investigation.

17. On December 27, 2007, a bar investigator personally delivered a copy of Hobbs' grievance to respondent's husband at her residence.

18. The next day the bar received a voice mail message from an individual who identified herself as respondent and stated that she was going into a residential treatment program for substance abuse for 3 months.

19. Fifteenth Judicial Circuit Grievance Committee "E" issued a subpoena to Bank of America for production of records concerning respondent's trust account and operating account for the period of July 2006 through August 2007.

20. A review of those records did not reveal any deposits relating to the Hobbs' real estate transactions.

21. By letter dated June 25, 2008, respondent finally made a response to the Hobbs' bar grievance.

22. In that response she admitted that she wrote escrow deposit letters stating that she held the sum of \$2,500.00 on each contract, totaling \$10,000.00 but

that she “did not actually receive nor deposit any monies as stated in my executed letters.” A copy of the response was attached to the complaint as **Exhibit D**.

23. According to respondent, she represented a real estate investor, Maurice Bates, and she anticipated that Bates would furnish the deposits to her but he did not.

24. Respondent’s written and verbal representations concerning the initial deposits were false and material to the real estate transactions in question in that respondent never received or deposited any funds into her escrow account.

25. In making these representations, respondent acted deliberately or knowingly and/or intended that her representations be relied on by the seller and the seller’s representatives.

26. The seller and the seller’s representatives, in fact, relied on respondent’s representations to their detriment.

COUNT I

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27. Respondent falsely represented that she was holding escrow deposits in her trust account when she had not received or deposited any funds.

28. Respondent knew that at the time she represented that she was holding escrow deposits, she had not, in fact, received any monies to be held in escrow.

COUNT II

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29. The bar's staff auditor reviewed the records, which had been produced by Bank of America concerning respondent's trust account.

30. During the period of July 1, 2006 to August 31, 2007, the average month end balance in the trust account was \$802.20.

31. As of October 25, 2006, respondent's trust account showed a negative balance of -\$2,533.25 and the bank charged the account with an overdraft fee.

32. During the audit period, respondent deposit deposited various amounts from her operating account into her trust account including the following checks: check number 1299 dated August 18, 2006 in the amount of \$2,500.00, check number 1340 dated October 26, 2006 in the amount of \$2,000.00, and check number 1342 dated October 26, 2006 in the amount of \$3,000.00.

33. By depositing operating account funds to cover shortages in her trust account, respondent engaged in commingling.

COUNT III

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34. The audit of respondent's trust account revealed that multiple deposit slips had no indication for the client or matter for which funds were received, including, but not necessarily limited to, the following: August 3, 2006 in the amount of \$7,500.00; September 26, 2006 in the amount of \$5,000.00; October 5,

2006 in the amount of \$2,500.00; and December 13, 2006 in the amount of \$2,000.00.

COUNT IV

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35. On or about April 4, 2007, respondent borrowed the sum of \$20,000.00 from Siavash Amanieh.

36. Respondent signed a promissory note for the amount of the loan. A copy of the promissory note was attached to the complaint as **Exhibit E**.

37. On June 29, 2007, respondent remitted two checks to Amanieh -- check nos. 1461 and 1462, each in the amount of \$10,000. Copies of the checks were attached to the complaint as Composite **Exhibit F**.

38. Such checks were written from the Jill Newman, P.A. Operating Account.

39. A review of respondent's bank records, when records were subpoenaed by the bar, revealed that when respondent issued check nos. 1461 and 1462, the balance in her operating account was overdrawn by (\$1,725.75).

40. When respondent wrote the checks to Amanieh, respondent knew or should have known that she did not have sufficient funds in her operating account to cover the amounts of the checks.

41. When Amanieh presented such checks, both were returned for insufficient funds.

42. Respondent has failed to make good on these checks.

III. RECOMMENDATION AS TO WHETHER RESPONDENT SHOULD BE FOUND GUILTY:

My recommendation as to guilt is as follows:

As to The Florida Bar File No. 2008-50,586(15E):

A. As to Count I: By falsely representing that she was holding escrow deposits in her trust account when she had not received or deposited any funds, respondent violated R. Regulating Fla. Bar **3-4.3** [The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the state of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline.] and/or **4-8.4(c)** [A lawyer shall not: (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation...].

B. As to Count II: By engaging in commingling (which occurs when trust funds are deposited into an account other than a trust account or when operating account funds are deposited into a trust account to cover shortages), respondent violated R. Regulating Fla. Bar **5-1.1(a)** [A lawyer shall hold in trust, separate from the lawyer's own property, funds and property of clients or third

persons that are in a lawyer's possession in connection with a representation. All funds, including advances for fees, costs, and expenses, shall be kept in a separate bank or savings and loan association account maintained in the state where the lawyer's office is situated or elsewhere with the consent of the client or third person and clearly labeled and designated as a trust account. A lawyer may maintain funds belonging to the lawyer in the trust account in an amount no more than is reasonably sufficient to pay bank charges relating to the trust account.].

C. Given the negative balance in the trust account in October 2006 and the fact that Newman made multiple deposits from her operating account to cover apparent shortages, respondent violated R. Regulating Fla. Bar **5-1.1(b)** [Money or other property entrusted to an attorney for a specific purpose, including advances for fees, costs, and expenses, is held in trust and must be applied only to that purpose. Money and other property of clients coming into the hands of an attorney are not subject to counterclaim or setoff for attorney's fees, and a refusal to account for and deliver over such property upon demand shall be deemed a conversion.].

D. As to Count III: By failing to clearly identify the client or matter for which the funds were received, respondent failed to maintain minimum trust accounting records in violation of R. Regulating Fla. Bar **5-1.2(b)(2)** [The following are the minimum trust accounting records that shall be maintained:

(2) Original or duplicate deposit slips and, in the case of currency or coin, an additional cash receipts book, clearly identifying: (A) the date and source of all trust funds received; and (B) the client or matter for which the funds were received.].

As to The Florida Bar File No. 2008-50,382(15E):

E. As to Count IV: By the conduct set forth above, respondent violated R. Regulating Fla. Bar **3-4.3** [The commission by a lawyer of an act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the state of Florida and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline.]; and/or **4-8.4(c)** [A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.].

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

I recommend that respondent receive a 1 year suspension from the practice of law to be entered nunc pro tunc, September 22, 2008, the effective date of her 10 day suspension in Supreme Court Case No. SC07-2078 and that respondent be ordered to pay the costs of this matter. (Respondent remains suspended from Supreme Court Case No. SC07-2078 because she has not fulfilled the conditions required in that case).

In order to be reinstated to the practice of law, respondent must prove rehabilitation in accordance with R. Regulating Fla. Bar 3-5.1(e) and 3-7.10 including but not limited to, compliance with the conditions previously required in Supreme Court Case No. SC07-2078. The following conditions remain outstanding from Supreme Court Case No. SC07-2078: Before she resumes the practice of law, respondent is required to (1) submit a certification from Florida Lawyer's Assistance, Inc. that her substance abuse problem is under control and that she is fit to resume the practice of law and (2) provide The Florida Bar with a complete response to the complaint of George M. Hernandez.

I have based my recommendation upon the plea agreement between the parties, and upon my review of the applicable case law and the applicable Florida Standards For Imposing Lawyer Sanctions. The Florida Standards for Imposing Lawyer Sanctions support the imposition of a 1 year suspension. The applicable standard is as follows:

7.0 Violations of other Duties Owed as a Professional

7.2 Suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

Further, case law supports the imposition of a long term suspension for respondent's misconduct. See, The Florida Bar v. Smith, 866 So. 2d 41 (Fla. 2004)

[Respondent received a 1 year suspension for mismanagement of trust funds and dishonesty]; and The Florida Bar v. Williams, 753 So.2d 1258 (Fla. 2000)

[Respondent received a 1 year suspension for neglect, trust account violations and issuing a worthless check to an employee.].

V. PERSONAL HISTORY, PAST DISCIPLINARY RECORD, AND AGGRAVATING AND MITIGATING FACTORS:

I considered the following personal history and prior disciplinary record of respondent, to wit:

A. Personal History of Respondent:

Age: 45

Date Admitted to the Bar: May 31, 2000

B. Aggravating Factors: 9.22

(c) pattern of misconduct;

(d) multiple offenses.

C. Mitigating Factors: 9.32

(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings;

(h) physical or mental disability or impairment [During the time frame in which this misconduct took place, respondent suffered from a substance abuse problem. Respondent has undertaken treatment for this problem, including the completion of an in-patient treatment program.];

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, 500 South Duval Street, Tallahassee, Florida 32399-1927, and that copies were mailed by regular U.S. mail to the following: STAFF COUNSEL, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300; and RONNA FRIEDMAN YOUNG, Bar Counsel, The Florida Bar, Lakeview Plaza II, 1300 Concord Terrace, Suite 130, Sunrise, Florida 33323; and JILL BETH NEWMAN, Respondent, 8615 Indian River Run, Boynton Beach, Florida 33472 on this ____6____ day of ____May____, 2009.

MRP//signature on original document
MILY RODRIGUEZ-POWELL, Referee