

THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Case No. SC07-863

v.

TFB File No. 2004-01,364(1B)

SHERRY GRANT HALL,
Respondent.

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REPORT OF THE REFEREE

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as Referee to conduct disciplinary proceedings herein according to R. Regulating Fla. Bar 3-7.6, the following proceedings occurred:

On May 7, 2007, The Florida Bar filed its Complaint with the Florida Supreme Court. Respondent's counsel filed a Notice of Appearance on June 20, 2007, and an Answer to the Complaint with Affirmative Defenses on June 25, 2007. The Florida Bar filed a Reply to Respondent's Affirmative Defenses on July 10, 2007. The Referee held a Telephonic Case Management Conference with the parties' counsel on July 18, 2008, and issued an Order on Telephonic Case Management Conference on July 18, 2007.

The Florida Bar served Respondent with a First Set of Interrogatories and a Request for Production of Documents on August 2, 2007 which was answered by Respondent on September 19, 2007. Respondent served a First Set of Interrogatories on The Florida Bar on September 19, 2007, which was answered on November 5, 2007. Respondent served Notices of Deposition on October 5, 2007, setting several depositions for October 22, 2007. The Referee held a second telephonic case status conference with the parties' counsel on December 13, 2007. From January 2, 2008, through July 16, 2008, the parties continued to set numerous depositions of the witnesses listed in discovery responses. On May 13, 2008, the Referee held a telephonic hearing on an Objection to a Deposition Subpoena Duces Tecum, and issued an Order on June 16, 2008, instructing what documents should be produced by the witness. The Referee held telephonic case status conferences on August 22, 2008, and on September 2, 2008.

On September 9, 2008, The Florida Bar personally served a Second Set of Interrogatories and a Second Request for Production of Documents on Respondent that was answered on October 13, 2008. The parties set depositions of expert witnesses on October 8, 2008. The Florida Bar took a deposition of a lay witness and an expert witness on October 15, 2008, and

October 17, 2008, respectively. On October 17, 2008, Respondent filed a Motion in Limine with the Referee.

The Referee held a final hearing in Shalimar, Florida on October 20-21, 2008. The Referee held a telephonic case management conference on October 27, 2008 to finalize a penalty hearing date. On October 30, 2008, Respondent submitted a Witness List for Sanctions Hearing to the Referee. On October 31, 2008, the Referee held a telephonic case management conference to discuss Respondent's witness list.

A final penalty hearing was held on November 14, 2008, in Panama City, Florida. The Florida Bar filed its Affidavit of Costs on November 7, 2008. All of the aforementioned pleadings, responses thereto, transcripts, affidavits, exhibits 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 of the Supreme Court of Florida and the Rules Regulating The Florida Bar.

B. Narrative Summary of Case. I would find the following facts: In late 2000, the Respondent, Sherry Grant Hall, approached Irving and

Clara Godwin, property owners in Walton County, about leasing a portion of their pasture land for her horses. After negotiations, Hall went to visit the Godwins, bringing with her a pre-prepared lease agreement for a portion of the land. On January 21, 2001, the lease agreement was signed. At the time of the signing at the Godwins' home, the parties discussed possibility of the Godwins selling the pasture land as well as the remaining portions of the property to Hall. After some discussion, and brief notes to herself, she hand wrote an addendum on the lease which was then signed by the Godwins, Hall and a witness. Two copies were prepared and signed by all parties and the Godwins kept the copy with the handwritten addendum and Hall retained a fully signed copy without the addendum. Hall kept the notes for the addendum and the signed lease in a file at her home.

The handwritten addendum stated that "Hall and Godwin agreed that Hall would obtain an appraisal, at her costs, by the end of March. The parties will thereafter **negotiate an agreement** for Hall to purchase the pasture, the mobile home park and the Godwin residence, with time frames for such purchase to be at the election of Godwin and to be specified, along with this specific price(s), and a contract to be executed by those parties subsequent to this lease."

Hall received an appraisal of \$83,000.00 for the property and offered

to purchase the property from the Godwins which was refused. Later the Godwins obtained an appraisal for a higher amount which Hall refused to pay. Hall continued to contact the Godwins to sell her the property over the next several months. After another year of communication to the Godwins and to realtors involved in attempting to sell the property, Hall continued to insist she had an agreement to purchase the property as opposed to an agreement to negotiate a price for the property.

Eventually, the Respondent sent a letter on February 21, 2003 attaching a document entitled “Lease Agreement and *Agreement for Sale*” purportedly signed on January 21, 2001, supposedly signed by the Godwins, Hall and Joseph Grant who had witnessed the original lease document. Hall recorded the fraudulent Lease Agreement and Agreement for Sale in the Walton County Clerk’s Office on December 12, 2002, which had an added typed paragraph stating the parties shall thereafter “negotiate a time for *conveyance* of the property” to Hall and adding the words an Agreement for Sale to the first page of the document.

Three forensic document examiners reviewed the Lease and Agreement for Sale document with the typed language changed from the hand-written language and all concluded that signatures of Mr. and Mrs. Godwin and the witness were forged and that the signature of Hall was

genuine. One of the forensic document examiners felt that there were possible signs of excluding Hall from having forged the documents and another stated there were possible signs including her as possibly having forged the other three signatures. Hall was charged by the State Attorney's Office with two felonies, grand theft and uttering a forged instrument in reference to the fraudulent recording of the Lease Agreement and Agreement for Sale.

On August 21, 2006, the Respondent entered into a Deferred Prosecution Agreement in which she agreed among other things to (1) quit claim any interest in the property of Irving or Clara Godwin to give them clear title of the property within 48 hours of signing the agreement (2) to pay restitution to the Godwins of \$15,000.00, (3) to acknowledge in writing that the existing lease between the Respondent and the Godwins was null and void, (4) to vacate the pasture land and to relinquish any rights she might have had under the lease, (5) to execute any documents necessary to eliminate any cloud on the title to the Godwins' property resulting from the lease, and (6) to ensure that all sub-tenants or other persons occupying the pasture under Respondent's lease would vacate the property.

On September 7, 2006, the charges were dismissed against Hall because she had complied with the terms and conditions of the Deferred

Prosecution Agreement. The Florida Bar Complaint against Hall charged her with violation of Rules Regulating the Florida Bar 3-4.3 Misconduct, 4-1.7(b) Conflict of Interest General Rule 2005, 4-1.8(a,b) Conflict of Interest Prohibiting Transactions, 4-1.9(b) Conflict of Interest Former Client, this is on 13 of the Complaint, 4-1.16 Declining or Terminating Representation, 4-8.1 Bar Admission Disciplinary Matters, 4-8.4(c) Misrepresentation and 4-8.4(d) Conduct Prejudicial to the Administration of Justice.

The Bar has convinced me by clear and convincing evidence that Hall violated Rule 4-8.4(c) and the other violations were either withdrawn or inapplicable to this case.

I find that Hall changed the title of the document from Lease to Lease and Agreement for Sale and added additional language to the lease. In these days of computers it would have been impossible for Hall to take the signed agreement back to her office and make it “look good” by typing in the language. A signed and fully executed agreement could not have had a paragraph added without either handwriting it or with the use of a typewriter. The changed Lease and Agreement for Sale was prepared again by computer with a changed title and a changed addendum and three forged signatures.

III. RECOMMENDATIONS AS TO GUILT.

I recommend that Respondent be found guilty of violating the following Rule Regulating the Florida Bar: 4-8.4(c) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation,...).

Hall admitted that she deliberately and intentionally changed the title of the document and that she intentionally changed language from the hand-written addendum to the printed language. This made a substantial change in the content of the document and Hall did this for her own benefit. She argues that since her signature on the forged document was genuine, she must have signed it in the process of signing multiple other documents and did not realize what she had done and that some unnamed person in her office must have forged the other three signatures. This strikes the Referee as incredulous since there is no benefit for office staff to have forged signatures. Additionally, the Hall stated that she did not have a regular assistant to do clerical work for her but that the lawyers did their own typing and in fact, she had prepared this agreement on her home computer and that she did not have a file in the office and that 90-95% of her legal work was performed at her home. The witness Joseph Grant as well as Mrs. Godwin testified that the hand-written language placed on the document that she

retained was also added on to the second document retained by Mrs. Hall. Although there is no proof beyond a reasonable doubt that the Respondent Hall actually forged the signatures, there is no doubt that her signature is genuine and this is a factor to be considered. A fraud was committed when the name of the document was changed and the language was changed from the original document.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

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

A. I have considered a recommendation for discipline pursuant to 7.2 of the Standards. The Bar suggests that disbarment is appropriate but I have also considered things in aggravation and mitigation pursuant to the Standards and find that a suspension from the practice of law for a period of ninety (90) days would be appropriate for Hall's misconduct.

B. Payment of The Florida Bar's costs in the amount of \$20,160.71 in these disciplinary proceedings.

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

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

A. Personal History of Respondent

Age: 50

Date admitted to the Bar: October 31, 1986

B. Prior Discipline: None

C. Under Standard 9.22, I found the following aggravating factors:

A troubling aspect of this case is that Hall attempted by means of numerous letters, phone calls and visits to the Godwins to achieve her goal of purchasing the property at a price she desired to pay.

Hall didn't notify anyone of the changed terms until February 2003 and continued to insist that she had an agreement to purchase the property not merely what could be considered as a possible option to purchase.

D. Under Standard 9.32, I found the following mitigating factors:

Hall has no history of any violation of the Rules Governing The Florida Bar and she is well respected in her community as an honest, hard working loyal friend involved in numerous community and church activities to the betterment of others.

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

Hall suggested that the Bar delayed these proceedings which cost her to have to hire an attorney for criminal charges and/or since she was only found guilty of violation of one Rule that she should not be responsible for the costs. I find that the criminal proceeding is a separate matter and is no

substitute for this proceeding and thus, that expense would have been expended in any event. Further the main focus of this case was the document itself, its forgery and modification and thus, the Hall should be responsible to pay all of the costs reasonably incurred by the Bar.

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

Administrative Costs, pursuant to R. Regulating Fla. Bar 3-7.6(q)(1)(I) \$	1,250.00
Investigative Costs & Expenses	5,014.54
Bar Counsel Expenses	2,324.47
Court Reporter Expenses	7,217.61
Expert Fees	<u>4,354.09</u>
TOTAL	<u>\$20,160.71</u>

It is recommended that such costs be charged to respondent and that interest at the statutory rate shall accrue and be deemed delinquent 30 days after the judgment in this case becomes final unless paid in full or otherwise deferred by the Board of Governors of The Florida Bar.

DATED this 20th day of November, 2008.

JUDGE DEDEE S. COSTELLO
REFEREE
Bay County Courthouse
300 East 4th Street
Post Office Box 1089
Panama City, Florida 32402-1089

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 KENNETH LAWRENCE MARVIN, Staff Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300, OLIVIA PAIVA KLEIN, Bar Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300; and LOIS B. LEPP, Respondent's Counsel, at her record Bar address of 902 E. Gadsden Street, Pensacola, Florida 32501-4074, on this 20th day of November, 2008.

JUDGE DEDEE S. COSTELLO
REFEREE