

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

v.

ENRIQUE MIRANDA,
Respondent.

Supreme Court Case
No. SC21-183

The Florida Bar File Nos.
2020-70,563(11D)(MES)
2021-70,151(11D)(MES)

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REPORT OF REFEREE

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 February 9, 2021, The Florida Bar filed its Petition for Emergency Suspension in these proceedings. On February 11, 2021, the Supreme Court of Florida entered an order approving the Bar's Petition for Emergency Suspension and suspended Respondent until further order of this court. On February 22, 2021, the undersigned was appointed as referee in these proceedings. On May 6, 2021 and June 15, 2021, a final hearing was held in this matter. All items properly filed including pleadings, recorded testimony (if transcribed), exhibits in evidence and the report of

referee constitute the record in this case and are forwarded to the Supreme Court of Florida.

II. FINDINGS OF FACT

Jurisdictional Statement. Respondent is, and at all times mentioned during this investigation was, a member of The Florida Bar, albeit emergency suspended pursuant to order of the Supreme Court of Florida dated February 11, 2021, and subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida.

Narrative Summary of Case.

As to The Florida Bar File No. 2020-70,563(11D)(MES):

In the Florida Bar File No. 2020-70,563(11D)(MES), respondent agreed to act as escrow agent pursuant to the terms of a funds escrow agreement between Xeon Holding Limited (Complainant) and C.L. Campos Assesoria Empresarial (Campos). The escrow agreement set forth the terms and conditions upon which respondent could disburse the \$200,000.00 deposited into his trust account pursuant to the agreement.

The agreement required respondent to disburse \$100,000.00 to Campos for pre-transaction expenses, and further required respondent to hold \$95,000.00 in his trust account until all conditions precedent were met. The remaining \$5,000.00 represented respondent's fee. Rather than

complying with the terms of the agreement, respondent disbursed nearly all of the deposited funds within fifteen days of receipt.

Respondent did not disburse the first \$100,000.00 to Campos for the purpose of paying pre-transaction expenses as directed by the terms of the agreement, but rather disbursed \$186,000.00 to various persons and entities who appear to be unrelated to the transaction governed by the agreement. Respondent disbursed these funds upon Campos' instructions. However, Respondent was not permitted to simply rely on the instructions of one party where those instructions were contrary to the explicit terms of the escrow agreement. *See ie., The Florida Bar v. Joy*, 679 So.2d 1165 (Fla. 1996).

When the conditions precedent did not materialize for the disbursement of the remainder of the funds, the attorney for complainant requested respondent to refund the \$95,000.00 that was supposed to be held in trust. Respondent replied to this request by indicating that he was ill and would return the funds when he was well. Thereafter, respondent stopped responding to communications from counsel for complainant.

Upon inquiry by the bar, respondent made misrepresentations regarding the status and location of the \$95,000.00 he was required to hold in trust. Respondent stated that on the date the condition precedent was

due to occur, he was holding \$98,615.00 in trust. The Staff Auditor's review of respondent's trust account demonstrated this to be false. The balance in the trust account on the relevant date was \$13,465.00.

Indeed, throughout the entirety of the six month period in which the investor was attempting to secure a refund of the funds that were to remain in trust, the balance in respondent's trust account was insufficient to refund the amount owed, ranging instead between \$4,429.00 and \$13,465.00. Approximately six months after complainant began requesting a refund of the \$95,000.00, respondent finally returned same from funds recently deposited into his account from a law firm that appears to be unrelated to the transaction and/or escrow agreement.

As to The Florida Bar File No. 2021-70,151(11D)(MES):

In the Florida Bar File No. 2021-70,151(11D)(MES), while the bar's investigation into the above described misconduct was actively pending, respondent received a deposit into his trust account in the amount of \$581,008.79. Thereafter respondent received what purported to be a contract governing these funds from Mr. Aldo Algandona, a person previously known to respondent.

The purported contract indicated the funds were deposited as part of a renewable energy project that Algandona was developing in Panama,

and that the funds were deposited for Algandona's benefit. Respondent asserts he also received a letter from Mr. Betters, the remitter of the funds, authorizing same. Irrespective, respondent made no effort to communicate with Mr. Betters, despite the fact his contact information was included on the letter. Instead, respondent relied on Algandona's representations regarding disbursement of the funds.

However, these funds were not the subject of a valid contract, but rather resulted from a wire fraud scheme. The couple remitting the funds believed they were making a deposit on the purchase of a home in North Carolina. The fraudster in this case hacked into the email account of the law firm/closing agent and changed the wiring instructions from the correct account to respondent's trust account.

Based on Algandona's instructions, respondent transferred the entirety of the deposit to his operating account at SunTrust and disbursed the proceeds from that account. Respondent thereafter wire transferred \$569,764 to Algandona, \$300 was transferred to Yiwu Mochu Group in China, and \$5,000 to Capital Solutions Group in Illinois. \$5,948.79 remains unaccounted for and may have represented respondent's "fee" as escrow agent.

As escrow agent, respondent owed a fiduciary duty to both the remitter and the beneficiary of the funds deposited. *See ie., The Florida Bar v. Joy*, 679 So. 2d 1165, 1167 (Fla. 1996). As such, minimal due diligence required respondent to make contact with the party remitting the funds and to confirm his or her understanding of the purpose and agreement regarding the funds.

Had respondent conducted the due diligence required of a fiduciary, the fraud in this transaction would have been discovered before the funds were disbursed from respondent's trust account. At this time, although the bank was able to recover a portion of the funds that respondent improperly disbursed, \$11,045.79 of the defrauded homebuyer's funds have not yet been returned to them.

III. RECOMMENDATIONS AS TO GUILT.

I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar: 3-4.3 (Misconduct and Minor Misconduct), 4-1.15 (Safekeeping Property), 4-8.1 (Bar Admission and Disciplinary Matters), 4-8.4(c) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation), and 5-1.1 (Trust Accounts).

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

400 Violation of Duties Owed to Clients

4.1 Failure to Preserve the Client's Property

4.1(a) Disbarment is appropriate when a lawyer intentionally or knowingly converts client property regardless of injury or potential injury.

700 Violations of Other Duties Owed as a Professional

7.1 Deceptive Conduct or Statements and Unreasonable or Improper Fees

7.1(a) Disbarment is appropriate when a lawyer intentionally engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

V. CASE LAW

I considered the following case law prior to recommending discipline:

- The Florida Bar v. Gregory A. Martin, 147 So.3d 529 (Table), 2014 WL 2801599 (Fla. 2014), with corresponding Reports of Referee
- The Florida Bar v. Gregory A. Martin, 51 So.3d 466 (Table), 2010 WL 5158128 (Fla. 2010), with corresponding Petition for Emergency Suspension
- The Florida Bar v. William Bedford Watson, III, 76 So.3d 915 (Fla. 2011)

- The Florida Bar v. William Bedford Watson, III, 88 So.3d 151 (Table), 2012 WL 1320130 (Fla. 2012), with corresponding Report of Referee
- The Florida Bar v. Jose Carlos Marrero, 192 So.3d 23 (Fla. 2016)
- In Re: Petition for Disciplinary Revocation of Philip Jay Reichenthal, 2019 WL 5624590 (Fla. 2019)

VI. 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:

- A. Disbarment.
- B. Payment of The Florida Bar's costs in these proceedings.

I note that in making this recommendation, I relied upon case law that holds disbarment is the appropriate penalty for an escrow agent that improperly disburses escrow funds for a second time, after the Florida Bar was already investigating the attorney for unrelated misconduct involving improper disbursements from a trust account. In the instant case, I do not find any evidence to suggest that Respondent himself was aware of, or an active participant in, the frauds that were perpetrated against the complainants in these matters. I do not find that he took any money for himself from these transactions, beyond his fees as escrow agent. Rather,

he failed to abide by his obligations as a fiduciary and accordingly, facilitated the fraud that occurred through his failure to abide strictly by the terms of the escrow agreement, and his disbursement of funds before the conditions precedent occurred. Although I do not find that Respondent knowingly and intentionally participated in the fraud at issue in these cases, I do find that his conduct which facilitated the fraud was intentional, as defined in *The Florida Bar v. Fredericks*, 731 So.2d 1249, 1252 (Fla. 1999).

VII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-7.6(m)(1)(D), I considered the following:

Personal History of Respondent:

Age: 81

Date admitted to the Bar: October 19, 1984

Aggravating Factors:

- 3.2(b)(3) a pattern of misconduct;
- 3.2(b)(4) multiple offenses;
- 3.2(b)(6) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
- 3.2(b)(7) refusal to acknowledge the wrongful nature of the conduct;
- 3.2(b)(8) vulnerability of the victim; and

3.2(b)(9) substantial experience in the practice of law.

Mitigating Factors:

3.3(b)(1) absence of a prior disciplinary record;

3.3(b)(3) personal or emotional problems;

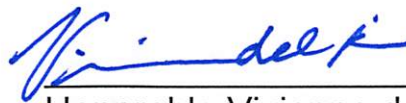
3.3(b)(8) physical or mental disability or impairment; and

3.3(b)(12) remorse.

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

The Florida Bar, having been successful in this matter, shall be awarded their necessary taxable costs of this proceeding and shall submit their statement of costs, as well as a motion to assess costs against Respondent.

Dated this 25th day of June, 2021.



Honorable Vivianne del Rio, Referee
Circuit Court Judge
MDC Children's Courthouse
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Miami, Florida 33128

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