

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

v.

ANTONIO GIOVONNIE MARTIN,
Respondent.

Supreme Court Case
No. SC21-915

The Florida Bar File
No. 2019-30,880(10B)

REPORT OF 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 15, 2021, The Florida Bar filed its Complaint against respondent in these proceedings. The parties entered into a Conditional Guilty Plea for Consent Judgment. 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. In accordance with the Conditional Guilty Plea for Consent Judgment, I find:

Respondent engaged in a conflict of interest when he concurrently represented Don Genutis, the grantor, David Dey, the beneficiary, and himself as trustee and counsel for Messrs. Genutis and Dey in the creation of a land trust, as well as representing Mr. Genutis in the foreclosure defense for the subject property.

In March 2016, Mr. Dey communicated with Mr. Genutis, the owner of the property located at 2261 Couples Drive, Lakeland, Florida, to discuss a possible transaction involving Mr. Genutis' property that was about to go into foreclosure. As part of the transaction, respondent was hired by both Mr. Genutis and Mr. Dey to evaluate any mortgage defects, to review appraisals, and to look for a method to save the property from foreclosure. After a conference call between Mr. Genutis, Mr. Dey, and respondent, the parties agreed to place the property into a Land Trust where respondent would represent himself as trustee, Mr. Genutis as grantor, and Mr. Dey as

the beneficiary of the trust. Mr. Genutis believed that he would receive some benefit by placing his property into the land trust. If a foreclosure proceeding was filed, respondent would then represent Mr. Genutis in any foreclosure defense.

Respondent did not obtain a signed, written waiver from Mr. Genutis or recommend that Mr. Genutis consult with independent counsel.

Respondent did not obtain a signed, written waiver from Mr. Dey or recommend that Mr. Dey consult with independent counsel.

On March 19, 2016, Messrs. Genutis and Dey provided respondent with a signed real estate contract binding the interest of Mr. Genutis and the Land Trust, a quit claim deed signed by Mr. Genutis transferring the property into Couples Drive Land Trust, and a limited power of attorney to allow respondent to act on Mr. Genutis' behalf with regard to the property. Although Mr. Dey had no liability in the transaction, as beneficiary of the trust, Mr. Dey could potentially obtain ownership of the property if it was not lost in the foreclosure proceeding. Respondent did not provide legal advice to Mr. Genutis concerning Mr. Genutis' contract with Mr. Dey. Respondent did not advise Mr. Genutis that he gave up his titled ownership of the property while remaining liable for the note and mortgage and tax indebtedness from the property that was transferred into the land trust.

On or about December 15, 2016, a foreclosure proceeding, Case No. 2016-CA-004238, was filed against Mr. Genutis regarding the subject property located at 2261 Couples Drive, Lakeland, Florida, in the Tenth Judicial Circuit, Polk County. In early 2017, upon receiving notice that Mr. Genutis was served with residential foreclosure documents, respondent's office filed a notice of appearance and the signed documents that were provided by Mr. Genutis to respondent in 2016. Mr. Genutis was unaware that respondent had commenced representing Mr. Genutis in the foreclosure proceeding.

On or about February 2019, Mr. Genutis sent a letter to respondent and indicated that Mr. Genutis was unable to contact or communicate with Mr. Dey. Mr. Genutis inquired whether he would receive any benefit from the creation of the land trust. Thereafter, Mr. Genutis and respondent spoke on several occasions to discuss whether a conflict of interest existed between Mr. Dey, Mr. Genutis, and respondent. Respondent withdrew from his representations of the parties.

III. RECOMMENDATIONS AS TO GUILT

In accordance with the Conditional Guilty Plea for Consent Judgment, I recommend that respondent be found guilty of violating the following Rules Regulating The Florida Bar: 3-4.3 Misconduct and Minor Misconduct;

4-1.2(a) Lawyer to Abide by Client's Decisions; 4-1.4(a) Informing Client of Status of Representation; 4-1.7(a) Representing Adverse Interests; 4-1.7(b) Informed Consent; 4-1.7(c) Explanation to Clients; 4-8.4(d) Misconduct – conduct in connection with the practice of law that is prejudicial to the administration of justice.

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

3.2(b) Aggravating Factors.

None.

3.3(b) Mitigating Factors.

- (1) absence of a prior disciplinary record;
- (5) full and free disclosure to the bar or cooperative attitude toward the proceedings;
- (6) inexperience in the practice of law (Respondent, admitted in 2010, was only admitted six years when this matter began in 2016; and,
- (12) remorse.

4.3(B) Failure to Avoid Conflicts of Interest

Suspension is appropriate when a lawyer knows of a conflict of interest, does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.

V. CASE LAW

I considered the following case law prior to recommending discipline:

In The Florida Bar v. Sejpal, 2020 WL 2498220 (Fla. May 14, 2020), Sejpal was suspended for 90 days. Sejpal failed to represent a client competently and diligently in a condominium dispute and failed to reasonably communicate and consult with the client about how he was going to pursue the client's objectives. Sejpal was dishonest with the client and made numerous misrepresentations regarding the status of the case.

In The Florida Bar v. Robertson, 2020 WL 4547359 (Fla. Aug. 6, 2020), Robertson received a 90-day suspension with the requirement to attend Ethics School and Professionalism Workshop. Robertson, an attorney and general contractor who owns a construction company, referred clients of his law firm to his construction company without advising them to seek independent counsel and without putting the terms of the business transaction in writing with the clients' informed consent. Robertson represented a married couple against the seller of a home for

failing to disclose mold and water damage. The husband fired Robertson after discovering an impermissible personal relationship had developed between Robertson and his wife. Despite the conflict of interest, and having been fired by the husband, Robertson filed documents with the court on behalf of both clients. Robertson has no prior discipline.

In The Florida Bar v. O'Toole, 2016 WL 562680 (Fla. Feb. 11, 2016), O'Toole received a 90-day suspension. O'Toole learned that a client was in violation of an injunction and ignored the situation. A complaint was subsequently filed against O'Toole for contempt for failure to pay plaintiffs the funds he had received from his client. O'Toole also failed to disclose a conflict of interest between he and his client and failed to explain the conflict to his client. Respondent had no prior discipline.

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

In accordance with the Conditional Guilty Plea for Consent Judgment, I recommend that respondent be found guilty of misconduct justifying disciplinary measures, and that he be disciplined by:

- A. A 90-day suspension from the practice of law; and,
- B. Payment of the disciplinary costs.

Respondent will eliminate all indicia of respondent's status as an attorney on email, social media, telephone listings, stationery, checks, business cards office signs or any other indicia of respondent's status as an attorney, whatsoever.

VII. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD

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

Age: 40

Date admitted to the Bar: April 20, 2010

Prior Discipline: None

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

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

Administrative Fee	\$1,250.00
Copy Costs	\$601.50
Investigative Costs	<u>\$522.00</u>
 TOTAL	 \$2,373.50

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 30 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 29th day of November, 2021.

/s/ STEPHEN GEORGE HENDERSON
STEPHEN GEORGE HENDERSON
Referee

Original To:

Clerk of the Supreme Court of Florida, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida, 32399-1927.

Conformed Copies via e-mail to:

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