

**IN THE SUPREME COURT OF FLORIDA**  
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

MANUEL MARCELO ARVESU,

Respondent.

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Supreme Court Case  
No. SC06-1698

The Florida Bar  
File No. 2005-71,039(11P)

**REPORT OF REFEREE**

**I. SUMMARY OF PROCEEDINGS:** Pursuant to the undersigned being duly appointed as referee for the Supreme Court of Florida to conduct disciplinary proceedings as provided for by Rule 3-7.6(a) of the Rules Regulating The Florida Bar, review of a Disbarment on Consent was undertaken. All of the pleadings are forwarded with this report and the foregoing constitutes the record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: William Mulligan  
The Florida Bar  
444 Brickell Avenue, Suite M-100  
Miami, FL 33131

For Respondent: Kenneth N. Feldman, Esq.  
550 Biltmore Way, Suite 780  
Coral Gables, Florida 33134

**II. FINDINGS OF FACT:** In his Disbarment on Consent, Respondent, admits certain factual matters which I hereby accept and adopt as the findings of fact in this cause, to-wit:

A. On or about December 31, 2003, Respondent served as the attorney for the buyer and Florida Title and Escrow Fund which was the closing agent in a real estate transaction involving Sidonia View Holdings, LLC (“Buyer”) and Michael A. Aliberti (“Seller”).

B. The Seller’s Settlement Statement reflected that a Wells Fargo (“Lender”) mortgage in the amount of \$64,235.46 would be paid off from the proceeds due Seller.

C. The mortgage was not immediately paid off after closing; Respondent proceeded to make monthly mortgage payments for the months of January 2004 through July 2004.

D. Thereafter, mortgage payments were made by Buyer.

E. Seller never agreed to the assumption of said mortgage. The Seller sold the property ‘as is’ subject to all liens, encumbrances and defects.

F. At closing, Seller’s proceeds were calculated by reducing from Seller’s proceeds an amount equal to payoff Seller’s mortgage, yet said payoff did not occur until twenty-one months thereafter.

G. The Staff Auditor of The Florida Bar (“Auditor”) conducted an audit

of Respondent's trust accounts and determined that there were large shortages between December 31, 2003 and June 30, 2005.

H. The Auditor found that Respondent may have commingled personal and operating funds with trust account funds. When Respondent was asked to provide supporting documentation to address said transactions, as required by Rule 5-1.2(b)(4), he was unable to do so.

I. Finally, the audit of said trust accounts as noted above, revealed that Respondent distributed client funds prior to them being collected in violation of Rule 5-1.1(j), maintained client ledgers that did not meet the requirements of Rule 5-1.2(b)(6), and that three of Respondent's trust accounts were not enrolled in the Interest on Trust Accounts (IOTA) Program as required by Rule 5-1.1(g)(2).

J. For the purposes of this consent judgment only, Respondent admits to violation of Rules 3-4.3 (Misconduct and Minor Misconduct), 4-8.4(c) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation...), 5-1.1 (Trust Accounts) and 5-1.2 (Trust Accounting Records and Procedures) of the Rules Regulating The Florida Bar.

**III. RECOMMENDATION AS TO GUILT:** Based upon Respondent's admissions, I recommend that Respondent be found guilty of violating Rules 3-4.3 (Misconduct and Minor Misconduct), 4-8.4(c) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation...), 5-1.1 (Trust

Accounts) and 5-1.2 (Trust Accounting Records and Procedures) of the Rules Regulating The Florida Bar.

**IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE**

**APPLIED:** Having reviewed the record of these proceedings, I find that Respondent's plea and the recommendation of The Florida Bar as to terms of discipline are both fair to the Respondent and in the best interest of the public. Accordingly, Respondent's Disbarment on Consent and the terms of discipline recommended by The Florida Bar are accepted and hereby adopted as the recommendation of this Referee in this matter and are as follows:

- A. Disbarment nunc pro tunc to June 30, 2006, with leave to reapply after five (5) years.**

**V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD:**

Age: 50

Date Admitted to The Florida Bar: January 16, 1986

Prior disciplinary record: None

**VI. STATEMENT OF COSTS AND RECOMMENDATION AS TO THE**

**MANNER IN WHICH COSTS SHOULD BE TAXED:** I find that the following costs were incurred by The Florida Bar in this proceeding:

Administrative costs	
Rule 3-7.6(q)(1)(I) .....	\$ 1,250.00

Branch Auditor's Costs .....	\$ 4,336.50
Staff Investigators' Costs .....	\$ <u>52.00</u>
<b>TOTAL:</b>	<b>\$ 5,638.50</b>

It is recommended that the foregoing costs be assessed against Respondent. It is further recommended that execution issue with interest at the prevailing statutory rate to accrue on all costs not paid within 30 days of the Supreme Court's final order, unless the time for payment is extended by the Board of Governors of The Florida Bar.

Dated this \_\_\_\_ day of \_\_\_\_\_ 2007.

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HONORABLE ANA M. PANDO, Referee

Copies furnished to:

William Mulligan, Bar Counsel  
Kenneth N. Feldman, Attorney for the Respondent  
Kenneth L. Marvin, Staff Counsel