IN THE SUPREME COURT OF FLORIDA

CHARLES K. INGLIS,

Petitioner, Case No. 61,530

v.

THE FLORIDA BAR,

Respondent.

_____/

PETITIONER'S REPLY BRIEF

RICHARD T. EARLE, JR.
EARLE AND EARLE
447 Third Avenue North
St. Petersburg, FL 33701
(813) 898-4474

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CORRECTIONS TO RESPONDENT'S STATEMENT OF FACTS

There are several misstatements of fact in Respondent's Statement of Facts which should be corrected.

On Page 3 in referring to the criminal charges against Petitioner and the disposition thereof it is stated:

> "Then, in December 1970, during the reinstatement proceedings, Petitioner was arrested for the shooting of a three-year old girl who lived in his neighborhood. Later, the information was amended and he pled nolo contendere to the charge of culpable negligence. He was adjudicated guilty and was given two years probation. He then withdrew the pending Petition for Reinstatement. (R.271).

The record reflects that while the first reinstatement proceedings were pending Petitioner was charged with aggravated assault as a result of the shooting. At that point he withdrew his Petition for Reinstatement. Sometime later the charge was reduced to culpable negligence to which he pled nolo contendere. He did not withdraw his first Petition for Reinstatement after he pled nolo contendere and was adjudicated guilty.

On Page 5 in referring to the Borrow Pit transaction, Respondent states:

> "Relying on Petitioner's reputation and expertise as a real estate broker, Morgan, Kirby and Thayer agreed that Petitioner would prepare the listing and offer the Pit for sale with the Florida Real Estate Exchange (R.278)."

Counsel has carefully read not only Page 278 of the record but the entire record and there is not one shred of testimony to the effect that Morgan, Kirby and Thayer or any of them ever relied on Petitioner's reputation and expertise as a real estate broker. Petitioner points out that the referee did not find as a fact that the three other co-owners relied on Petitioner's reputation and expertise as a real estate broker but instead found that Petitioner violated a "moral duty" to his associates "engaged in a joint venture" by failing to inform the co-owners that he was making a substantial profit.

In addition to the foregoing, the Respondent states as facts the Bar's construction of only a portion of the testimony favorable to it, which construction is obviously contrary to the findings of fact by the referee.

In this regard in referring to "the STUBBS case", Respondent on Page 5 states:

> "Prior to his arrest for aggravated assault in the shooting of a child, Terri Stubbs, witnesses testified that the Sheriff had been called on several occasions due to Petitioner's alleged shooting of neighborhood animals. (R.175)."

First, the only witness who so testified was Elbert Stubbs. There was no evidence to the effect that Petitioner had actually shot any neighborhood animals. On the same page, Respondent states:

> "Mrs. Grace Laura Smith (formerly Mrs. Stubbs) testified that at one point, Petitioner threatened her with a pitchfork. (R.182)."

The testimony referred to was to the effect that Mrs. Smith and the Petitioner had engaged in an argument. Mrs. Smith was in the road and the Petitioner was on his property and had a pitchfork in his hand. Mrs. Smith testified that she told him that "if he wanted to settle that, come out in the road and we would settle it. But I would not set foot in his yard. And if I recall correctly, he started toward me with the pitchfork. But he was shaking so badly, like he always did when we had words. He would start shaking and jerking. And I think my husband came out and got hold of me because I was ready to go at him too."

In relation to this incident, the referee did not find as a fact that Petitioner so conducted himself. His recommendation of a finding that Petitioner not be reinstated is based solely upon the shooting of the Stubbs child, the plea of nolo contendere and the adjudication of guilt.

On Page 7 in referring to the Flagg Brothers Building transaction, Respondent states:

> ". . .. Later, Petitioner refused to agree with the others as to uncertain terms in the purchase agreement."

As a matter of fact, the terms in the purchase agreement were not "uncertain." The four co-owners had signed a lease and an option. The other co-owners changed the terms of the option without the knowledge and consent of Petitioner. Petitioner refused to convey the property under the terms of the option as changed without his knowledge and consent. (R195, 196, 298, 299, 300, 301).

Again on Page 7 referring to the Flagg Brothers Building, the Respondent states:

> "On the day of the closing, before he would sign the necessary papers, Petitioner presented Mr. Harold Morgan with a self-styled recommendation for Petitioner's reinstatement into the Florida Bar, for his signature. Mr. Morgan refused to sign the recommendation. (R189)"

The inference to be drawn from this statement is that at the time of the closing (the execution of the conveyance), Petitioner demanded that Mr. Morgan sign the recommendation for Petitioner's reinstatement and then when he refused to do so, Petitioner refused to convey the property. There is nothing in the record reflecting that the request to sign the recommendation occurred at the time the conveyance was to be executed or that Petitioner refused to sign any documents because of Morgan's refusal. It is unclear but Respondent suggests that it is more credible to believe that the request to sign the recommendation occurred when the initial documents were executed relative to the lease and the option. Petitioner's refusal to sign the Deed was obviously because of

the changes made in the option price to which he had not agreed and this resulted in an adjustment between the Petitioner and his co-owners whereby he received more than one-fourth of the option price. Of greater significance, the referee in his report did not find that Petitioner did any wrong relative to the Flagg Brothers Building and did not recommend denial of reinstatement because of these facts.

In relation to THE SALE OF BROOKESVILLE FORD DEALERSHIP the Respondent completely ignores the fact that the referee found no wrongdoing on the part of the Petitioner in relationship to this matter. Respondent also completely ignores the fact that Petitioner sued Lowery and Tucker for his commission and after lengthy litigation recovered thereon. Petitioner submits that the statement in the brief completely ignores the testimony of the Petitioner, the recovery of the judgment by the Petitioner and the referee's recommendations.

POINT INVOLVED

DOES THE RECORD REFLECT THAT PETITIONER SHOULD BE REINSTATED AS A MEMBER OF THE FLORIDA BAR

Respondent's brief is novel to say the least. The referee's recommendation that Petitioner not be reinstated is based solely upon:

1. His conduct in buying the Borrow Pit land from his co-owners when he knew he had a sale thereof for a substantial profit without advising the co-owners, and

2. His conduct at pleading nolo contendere to the criminal charge in the Stubbs matter and being adjudicated guilty thereof. The referee in his report specifically stated:

> "The referee has considered the other suggestions of misconduct urged by the Bar involving transactions relative to the 'Flagg Brothers Building' and his conduct in relation to the sale of the 'Lowery-Tucker Ford of Brooksville' business. The referee does not find these two latter incidents tainted with that degree of impropriety which would justify denial of the Petition for Reinstatement."

The referee further found as a fact that Petitioner had not established proof of a good reputation for professional ability but that this is not an adverse finding since he had not had the opportunity to so establish his reputation. The referee further found that:

> "The Bar urges that failure to make restitution for some nineteen (19) years reflects adversely on the good faith of Petitioner. The referee, while being of the opinion that Mr. Inglis could have been more diligent in tracing down

> the persons to whom restitution was to be made, is not inclined to penalize him since there was considerable difficulty in locating those persons to whom restitution was to be made. All persons having been fully compensated, the referee finds that Mr. Inglis has met the requirements as they relate to restitution of misappropriated funds."

The Respondent has not raised as issues on this appeal that the referee's findings of fact are not supported by the evidence or that the conclusions of law are not tenable. Instead, indirectly, by construing and sometimes misconstruing the testimony of witnesses most favorable to it, it treated such construction as fact.

On Page ____ of its brief, Respondent states:

> "His failure to make full restitution until almost 20 years following the initial Order, . . . and complaints of business associates stemming from his real estate dealings in recent years, readily indicate that Petitioner has not met the minimum essential elements to prove his fitness to practice law."

This statement completely ignores the referee's report, takes issue with it and yet does not attack the bases on which the report was made. In so doing, Respondent has attempted to throw the burden of supporting the referee's report on the Petitioner, whose burden it isn't.

AS TO THE STUBBS CASE

In Petitioner's brief, counsel took the position that being charged and pleading nolo contendere to the charge of culpable negligence in the Stubbs shooting incident did not reflect adversely on Petitioner's character, moral fitness and ability to practice law. Respondent completely sidestepped and failed to meet this argument; it does not even mention the

criminal charge. Instead, on Page 13 of the brief, Respondent states:

> ". . .. As to Petitioner's moral standing in the community, the Bar produced Mr. Elbert Stubbs who stated that Petitioner was accused of shooting animals in the neighborhood, and as a result, the Sheriff was called on several occasions (R.175." "Mrs. Grace Laura Smith, the former Mrs. Stubbs, when asked about her prior relationship with Petitioner, stated that following an argument about Petitioner's alleged shooting of neighborhood animals . . . he (Mr. Inglis) started threatening me with a pitchfork. He was shaking so badly, like he always did when we had words, he would start shaking and jerking. (R.182)."

The referee did not find that Petitioner shot any animals or that he threatened Mrs. Smith with a pitchfork and his recommendation that Petitioner not be reinstated was not based thereon. If it had been, Petitioner could certainly attack such findings because they are not substantiated by the record.

BORROW PIT INCIDENT

The referee found that Petitioner "as an associate engaged in the joint venture with other men, Mr. Inglis owed them a moral duty to disclose that he was going to make many thousands of dollars at their expense and his failure to so inform them reflects adversely upon his moral fitness."

The Petitioner attacked this finding on the basis that:

(1) The parties were mere owners in common of a parcel of real property and not joint venturers.

(2) That as between co-owners of a parcel of real property there was no duty, moral or otherwise, for Petitioner to tell the other co-owners that he had a sale for the property for more than his purchase price from the co-owners. Respondent, in its brief, does not address itself to either of these arguments. Instead, Respondent starts out with an assumed fact: The other co-owners requested that Petitioner "handle the solicitation and the sale of the property, relying on his expertise as a broker." The referee did not find that the co-owners relied on Petitioner's "expertise as a broker." There is no evidence in the record reflecting that they so relied. As a matter of fact, the record refutes a finding of such reliance. His recommendation is based solely on the finding that they were joint venturers and Petitioner owed them a duty because of this relationship. With this start, Respondent then quotes from Black's Law Dictionary a definition of a "fiduciary or confidential relationship" and then concludes that Plaintiff had a fiduciary relationship with the other co-owners as thus defined. Inasmuch as the assumption of fact is erroneous, this conclusion likewise must fail.

CONCLUSION

Respondent's Answer Brief completely fails to answer the issues related to Petitioner's Brief. These Answers are completely sidestepped and ignored because there is no Answer to the position taken by the Petitioner.

Respectfully submitted,

RICHARD T. EARLE, JR.
EARLE AND EARLE
447 Third Avenue North
St. Petersburg, FL 33701
(813)898-4474
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Diane Victor Lutes, Bar Counsel, The Florida Bar, Suite C-49, Tampa Airport, Marriott Hotel, Tampa, Florida 33607 and to John T. Berry, Staff Counsel, The Florida Bar, Tallahassee, Florida 32301 and to John F. Harkness, Jr., Executive Director, The Florida Bar, Tallahassee, Florida 32301, by regular U. S. Mail, on this 9th day of March, 1984.

Although the Certificate of Service of Respondent's Answer Brief reflected that the same was served by mail on Richard T. Earle, Jr. on February 21, 1984, the same was misaddressed and such not received by said attorney for Petitioner until February 29, 1984.

RICHARD T. EARLE, JR.