IN THE SUPREME COURT OF FLORIDA

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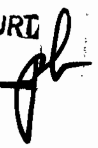

CASE NO. 62,075

THE FLORIDA BAR,

Petitioner,

vs.

RAMIRO ARANGO,

Respondent.

ANSWER BRIEF

by

THE FLORIDA BAR

(SUBSTITUTE COVER SHEET)

IN THE SUPREME COURT OF FLORIDA
CASE NO. 62,075

THE FLORIDA BAR,

Petitioner,

vs.

RAMIRO ARANGO,

Respondent.

ANSWER BRIEF

by

THE FLORIDA BAR

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TABLE OF CONTENTS

Page Number

Table of Citations ii

Statement of the Case and Facts 1

Argument 3

ISSUE ONE - THE STANDARD FOR REVIEW OF FINDING OF FACT 3

ISSUE TWO - PREPARATION OF ANY WAY REALTY ARTICLES OF INCORPORATION 4

ISSUE THREE - PREPARATION OF A REAL ESTATE CONTRACT FOR PURCHASER OF A RESIDENCE AT 1425 OBISPO, CORAL GABLES 6

ISSUE FOUR - PREPRATION OF A CONTRACT BETWEEN CAMILE CASTRO AND MOISES MARCEL QUIZMAN FOR THE SALE OF STOCK (Valued at $166,667) 7

ISSUE FIVE - PREPARATION OF A REAL ESTATE CONTRACT FOR THE PURCHASE OF A RESTAURANT BY MOISES QUIZMAN 9

ISSUE SIX - RESPONDENTS REPRESENTATION OF ELISA TAMAYO 11

ISSUE SEVEN - THE REFEREE'S SUPPLEMENTAL REPORT 13

ISSUE EIGHT - THE RECOMMENDED PENALTY 14

ISSUE NINE - UNCONTESTED FINDINGS OF FACT 15

Conclusion 16

TABLE OF CITATIONS

Authorities	Page Number
CONSTITUTION	
Florida Constitution, Art. V, Section 15	1
CASE DECISIONS	
Keyes Co. v. Dade County Bar Association, 46 So. 2d 605 (Fla. 1950)	7, 11
The Florida Bar v. Consolidated Business and Legal Forms, Inc., 386 So. 2d 797 (Fla. 1980)	3, 15
The Florida Bar v. Escobar, 322 So. 2d 25 (Fla. 1975)	14
The Florida Bar v. Fuentes, 190 So. 2d 748 (Fla. 1966)	13, 15
The Florida Bar v. Furman, 376 So. 2d 378 (Fla. 1979)	5
The Florida Bar v. Joyce, 299 So. 2d 27 (Fla. 1974)	14
The Florida Bar v. Lugo-Rodriguez, 317 So. 2d 721 (Fla. 1975)	14
In re Moran, 317 So. 2d 754 (Fla. 1975)	14
The Florida Bar v. Moran, 273 So. 2d 390 (Fla. 1973)	13, 15
The Florida Bar v. Neadel, 297 So. 2d 305 (Fla. 1974)	14
The Florida Bar v. Savitt, 363 So. 2d 559 (Fla. 1978)	15
The Florida Bar v. Scussel, 240 So. 2d 153 (Fla. 1970)	14
The Florida Bar v. Town, 174 So. 2d 395 (Fla. 1965)	5
The Florida Bar v. Walzak, 380 So. 2d 428 (Fla. 1980)	13, 14, 15
RULES	
Integration Rule, Article XVI, Rule III(B)(2)	1

STATEMENT OF THE CASE AND FACTS

This litigation began when The Florida Bar filed a Petition Against Unauthorized Practice of Law in this Court seeking a permanent injunction, a finding of indirect criminal contempt, an assessment of costs, and such other relief as this Court deemed appropriate against Ramiro Arango, the respondent herein. The jurisdiction of this Court to hear this matter was founded on Article V, Section 15, of the Florida Constitution. Subsequently, on July 12, 1982, this Court appointed Circuit Court Judge Robert P. Kaye as referee and authorized him to hold hearings, make findings of fact, and to report his findings to this Court. Judge Kaye held a preliminary hearing, disposed of pre-trial motions, permitted the conduct of discovery, and conducted a final hearing. The final hearing was protracted and occurred on three separete dates - December 1, 1982, December 16, 1982, and December 29, 1982. Both The Florida Bar and the respondent called a number of witnesses and introduced documentary evidence. These three hearings are reported in Volumes I, II, and III of the record respectively. On April 12, 1983, the referee executed his recommended order which contains findings of fact and recommendations of law and forwarded it to this Court.

On September 20, 1983, this Court handed down an order which granted the civil injunction originally sought by the petitioner by entering a permanent injunction against unauthorized practice of law by respondent. The September 20, 1983, order also requested the referee to clarify certain issues of fact and recommendations of law regarding a finding of indirect criminal contempt against the respondent. On September 30, 1983, the referee responded by readopting the findings of fact contained in his original report and by recommending that the respondent be sanctioned pursuant to Fla. Bar Integr. Rule, Art. XVI, Rule III(B)(2) [which in para. B is entitled "Indirect Criminal Contempt Proceeding"] by a fine of $2500.00 and by imprisonment of five (5) months.

Thereafter, on January 4, 1984, the clerk of this Court advised respondent's attorney by letter as follows, "If you wish to contest any of the findings of the referee, even though technically your request is late, you may still do so." (emphasis added) The January 4, 1984, letter from the clerk's office resulted from a Motion To Quash Order (as well as a subsequent response and reply thereto) filed by respondent's attorney on September 28, 1984, just after this Court's order which permanently enjoined the respondent and referred the case back to the referee for clarification regarding indirect criminal contempt. The respondent, on January 24, 1984, mailed his Objections To Reports of Referee, to which this brief replies.

In order to conserve both space and time, the petitioner hereby adopts and urges this Court to accept and approve the extensive Findings of Fact made by the referee in his original report dated March 23, 1983 (executed on April 12, 1983), without reproducing them here. In addition, the petitioner also urges this Court to accept and approve the Conclusions of Law and Recommendations of the referee contained in both his original report referred to above and his Supplemental Report dated September 30, 1983.

ARGUMENT

(Since the transcript of the final hearing in this case is in three volumes, references to the transcript will be made by using T-I, II or III followed by the appropriate page number.)

ISSUE ONE - THE STANDARD FOR REVIEW OF FINDINGS OF FACT

The respondent has chosen to attack five paragraphs in the referee's Findings of Fact, and leaves the remaining seven paragraphs undisturbed. (Note that there are twelve (12) paragraphs in the referee's Findings of Fact, since an apparent typographical error resulted in two paragraphs numbered 7 on pages 3 and 4 of the report.)

Apparently respondent misunderstands the standard for appellate review previously announced by this Court in cases of this nature since he repeatedly objects to the referee's findings, usually by citing the Court to evidence in the record favorable to his position, and pleading that this Court amend or change the referee's findings. The problem with this approach is, of course, that the referee is the jurist who heard the tones in the witness's voices and observed their demeanor - something no written transcript can ever convey. This case, like many others, has numerous points of conflicting testimony which someone must sift and weigh to determine the facts. This Court has given that job to the referee by stating in The Florida Bar v. Consolidated Business and Legal Forms, Inc., 386 So. 2d 797, (Fla. 1980),

> As we have stated on other occasions, this Court will not reverse the findings of a referee unless the findings are clearly erroneous or wholly lacking in evidentiary support. (citations omitted)

Petitioner submits that none of the referee's findings are either "clearly erroneous or wholly lacking in evidentiary support" and that each of the twelve paragraphs of the findings are bottomed on competent substantial evidence in the record. Since the respondent has elected to object to only five of the twelve paragraphs the

focus of the petitioner's remaining argument will be to show how each of the contested paragraphs of the findings deserve to be approved and adopted by this Court under the applicable standard of review addressed in the order they appear in the respondent's objections to reports of referee. (Also referred to as respondent's brief)

ISSUE TWO - PREPARATION OF ANY WAY REALTY ARTICLES OF INCORPORATION

The referee found, "Respondent prepared Articles of Incorporation for Any Way Realty Corp., and received payment of $100 from Miss Daisy Alvarez for the purchase of the corporate seal." (Ref. Rept., p. 10)

Respondent complains that the referee's finding is in error and cites testimony he believes to be favorable to his contention. However, some of the testimony reproduced in the respondent's brief shows evidence upon which the referee's finding can be based. For example:

Q (Mr. Boggs) And can you tell me how you went about establishing the corporation? . . .

A (Miss Alvarez) Well, we went to the lawyer's office to file all the papers . . .

Q When you say you went to the lawyer's office, could you tell the Court which lawyer you went to see.

. . . . . .

A I went to see directly Mr. Ramiro Arango . . . .

Q And what happened when you arrived . . .

A I asked for him because he was the only person I know in this office. And he received me and he asked me for the corporation's name . . . who is going to be the president and all those details.

(T-Vol. I, p. 7, 8)

. . . . . .

Q Miss Alvarez, did Mr. Arango receive any money from you for performing this work?

A I gave him a check for $100 for my corporation. I think it was for the seal.

(T-Vol. I, p. 9)

. . . . . .

In addition, Miss Alvarez also testified,

Q Did you talk to anyone else about forming the corporation while you were at 154 Giralda Avenue other than Mr. Arango?

A My partner, Fernando Fernandez.

Q But did you speak to anyone else who worked at 154 Giralda Avenue?

A No, I don't think so.

(T-Vol. I, p. 11)

The foregoing testimony makes it very clear that: (1) Miss Alvarez wanted a legal service done--the preparation of articles of incorporation [see The Florida Bar v. Town, 174 So. 2d 395 (Fla. 1965)], (2) Miss Alvarez went to a lawyer's office, "directly to see Mr. Ramiro Arango," (3) Miss Alvarez gave Mr. Arango the necessary information to form the corporation and a check for costs, and (4) Miss Alvarez talked to no other person at the respondent's office regarding this matter. Even if Miss Alvarez knew, as she later testified on cross examination, that respondent was not a lawyer, this knowledge on her part would not insulate respondent from the charge of unauthorized practice of law (hereafter U.P.L.). In U.P.L. cases such as The Florida Bar v. Furman, 376 So. 2d 378 (Fla. 1979), where the respondent publicly disavowed being a lawyer, this Court nevertheless enjoined conduct which amounted to the practice of law.

Respondent also points to the testimony of Milagros Gonzales in his effort to show that the referee's findings are in error. Apparently, the referee elected to give little weight to the testimony of Miss Gonzales. His reason probably was that this witness did typing for the respondent as well as other persons located in the office building managed by the respondent (T-Vol. II, p. 93). She was familiar enough with the respondent's work habits to be able to recognize his handwriting (T-Vol. II, p. 94). Consequently, since the witness was in an employee-employer type relationship with the respondent, the witness may have been subject to a bias toward the respondent.

Although the referee had conflicting testimony on the question of who prepared the Any Way Realty articles of incorporation, there is clearly a sufficient basis for his finding in the record.

ISSUE THREE - PREPARATION OF A REAL ESTATE CONTRACT FOR PURCHASER OF A RESIDENCE AT 1425 OBISPO, CORAL GABLES

Two witneses testified that the respondent prepared the contract in question which was a contract for the purchase of Magdalena Serra's home. Miss Serra swore that she saw the respondent formulate and prepare the contract as illustrated by the following:

> Q Did you see Mr. Arango prepare that contract?
>
> A Well, yes. As I said before, we went over to his office. I don't recall the date, whether it was a Saturday or a Sunday. We sat down at his desk. For ten minutes he was opening up his mail. And then afterwards he sat down at the typewriter and he started writing this contract.
> (T-Vol. II, p. 8)

On cross examination, Miss Serra doggedly stuck to this story and expanded it by explaining that the respondent learned the terms for the contract by talking to the buyers and sellers (T-Vol. II, p. 31, 32).

Miss Castro's testimony substantiates that of Miss Serra regarding the preparation of the contract (T-Vol. II, p. 100, 101, 102), and strengthens it by describing how she wrote checks to respondent to pay legal fees for the real estate transfer in question (T-Vol. II, p. 108, 109).

Respondent attempts to make much of the fact that both Serra and Castro were certain that respondent prepared the contract on a Saturday or Sunday when the date on the contract was a Tuesday. This is hardly an important point. One plausible explanation for the variance is that the contract date was left blank when it was signed and then filled in later. Another explanation is that the date was simply filled in incorrectly.

Again, the respondent cites the testimony of Milagros Gonzales, the secretary in the respondent's office building, and once again her testimony was apparently discounted by the referee--probably for the same reasons previously discussed.

The law has been very clear in Florida for more than thirty years that preparation of a real estate purchase contract for another by someone other than a lawyer or real estate broker is U.P.L. [see: Keyes Co. v. Dade County Bar Association, 46 So. 2d 605 (Fla. 1950)]. The respondent admitted that he is not a member of The Florida Bar in the pleadings and that he is neither a licensed real estate broker nor salesman in Florida (T-Vol. III, p. 41) on the witness stand.

Without question, the eyewitness testimony and physical documents presented at the final hearing gave the referee a sufficient basis to find that respondent prepared this real estate contract for another person.

ISSUE FOUR - PREPARATION OF A CONTRACT BETWEEN CAMILE CASTRO AND MOISES MARCEL QUIZMAN FOR THE SALE OF STOCK (Valued at $166,667)

Miss Castro testified on direct examination as follows:

Q You agreed to purchase four shares of stock when you signed that contract; is that correct?

A Yes.

Q Who prepared that contract?

A Ramiro Arango

(T-Vol. II, p. 110)

She also testified to the same effect on cross examination (T-Vol. II, p. 133). Respondent, however, suggests that this testimony is weakened because the witness truthfully admitted that she did not physically see the respondent prepare the contract. One wonders how many clients in this state see their attorneys prepare the legal documents they execute. Miss Castro testified that she thought that the

respondent was a lawyer (T-Vol. II, p. 102). She said that she would not have let him handle this matter if she had known he was not a lawyer (T-Vol. II, p. 114). She believed she was harmed as a result of signing this contract (T-Vol. II, p. 113). She stated that respondent prepared all the papers regarding this matter (T-Vol. II, p. 111).

Perhaps the most enlightening testimony on this point came from the respondent himself as follows:

Q Was it your testimony that Mary Louise Dennis prepared the contract for the purchase and sale of the stock in the Morocca Corporation, the contract which is now one of the exhibits, Bar's exhibits?

A Yes

.....

Q Mr. Arango, were you a defendant in a lawsuit called Morocca Corporation versus Ramiro Arango, which was tried in Dade County?

A Yes.

Q Do you recall that you testified at the final hearing that you prepared the contracts for sale of the stock that Mrs. Castro agreed to buy?

A That I prepared?

Q Do you recall --

A I discussed with Mary Louise Dennis everything that happened because she was the legal counsel.

Q Do you recall that a final hearing was held in Morocca Corporation versus Ramiro Arango in the Dade County Courthouse on April 22nd, 1982?

A I recall the dates and the hearing.

Q Do you recall the following questions and answers:

"Q Mr. Arango, isn't it true that you then prepared three more shares, share certificates for each--for four shares, one for you and your wife and one for Camille and one to Jacqueline?

"A Yes.

"Q You and Mrs. Castro signed those?

"A Yes.

"Q Isn't it also true that you prepared two contracts, one for your shares and one for Miss Castro's shares that were going to be purchased?

"A Yes."

Do you recall giving that testimony?

A It might be. It might be.

(T-Vol. III, p. 43-45)

The combination of Miss Castro's testimony and that of the respondent himself makes the conclusions reached by the referee in his findings of fact on this issue inescapable.

ISSUE FIVE - PREPARATION OF A REAL ESTATE CONTRACT FOR THE PURCHASE OF A RESTAURANT BY MOISES QUIZMAN

The main thrust of respondent's argument on this issue appears to be that the referee's findings of fact contained a typographical or transcribing error. The referee's findings state that respondent prepared a real estate contract to transfer the "Sensations Nightclub" from the Maroca Corporation to Moises Quizman (Ref. Rept., p. 4). Copies of the contract in question, both the initial contract and the amended version, are in evidence as Bar's Exhibits 2 and 3, respectively. A brief examination of these documents, which the referee had before him, reveals that the seller was the Maca Corporation, not the Maraca Corporation. This typographical or transcribing error is not significant; it is at most harmless. What is important, however, is that the referee found that the respondent prepared the contract in question and that subsequently damage was suffered by the buyer. This finding is more than adequately based on both the testimony of the seller's attorney, Mr. Leslie Schere, and that of the respondent himself.

Mr. Schere negotiated with the respondent regarding this sale and believed the respondent to be an attorney. He saw the respondent review the conveyancing documents (T-Vol. I, p. 27, 36). Mr. Schere, an experienced real estate lawyer, also

testified that he thought it was unusual for the respondent not to ask for a roofer's bond or termite bond at the closing in a commercial transaction like this one (T-Vol. I, p. 33).

Once again, the respondent's own testimony has heavy probative value on the issue of his preparation of this contract. On cross examination, the respondent testified as follows:

> Q Mr. Arango, do you remember giving your deposition on Friday, March the 13th, 1981, in a case called Lexington Investment Company Limited versus Morocca Corporation?
>
> A Yes.
>
> Q Do you remember that you were asked the following questions?
>
> > "Q Now, who prepared the contract for sale dated the 9th day of October, 1980, of the premises involved in this case known as the Sensations Club?"
>
> And do you remember giving the answer, "Myself"?
>
> A Yes, I remember.
>
> Q Do you remember the question being asked, "Where was this contract typed?" and the answer being given by you that this was typed by you?
>
> A That's true.
>
> . . . . .
>
> Q The question is: Do you remember giving the answer that you prepared the contract for sale for the sale of the Sensations?
>
> A I remember.
>
> Q And today you testified that you did not prepare this contract.
>
> A No, I did not testify I did not prepare. I testified that I prepared and I dealt with all the commercial side of the operation, and the legal side of the operation was prepared and handled by Mary Louise Dennis, but we both worked together.
>
> (T-Vol. III, p. 46-47)

Finally, respondent, in his brief on page 8, attempts to explain and justify respondent's conduct in this real estate transaction as the president of a corporation which ultimately purchased the realty from the buyer, Mr. Quizman. This

argument is nothing more than a red herring. The respondent testified that he thought that the contract was prepared and executed before the corporation of which he was president was even formed (T-Vol. III, p. 33). The contract itself (Bar Exhibits 2 and 3) shows that neither the respondent nor the corporation were parties.

Consequently, the respondent could not have prepared the contract for himself (or his own corporation) as he attempts to suggest in his brief, but rather the respondent prepared the contract for others as the referee clearly and correctly found. Such conduct has, of course, been held to the U.P.L. by this Court in prior decisions, including the Keyes case previously cited.

ISSUE SIX - RESPONDENT'S REPRESENTATION OF ELISA TAMAYO

The referee found that Elisa Tamayo went to the respondent's office, reasonably believed him to be an attorney based on his demeanor and the trappings of his office, and employed him to assist her and her husband regarding an immigration problem. The referee obviously based his finding on Mrs. Tamayo's testimony which is reproduced as follows:

Q Did you go to Mr. Arango's office?

A Yes.

Q What sort of a demeanor or behavior did Mr. Arango engage in when you were there?

A As an attorney.

Q Did you think he was an attorney when you walked in the door?

A Yes.

Q Did you think he was an attorney because of his reputation that you had knowledge of in the community?

A Yes, and because he had a card on his desk that said Dr. Ramiro Arango which in the Latin community means he is an attorney or medical doctor. And all the diplomas, there's like wall space, every thing is diplomas, diplomas.

Q Did Mr. Arango's office seem like a large office or small office to you?

A The whole office or his?

Q His personal office.

A A normal office for a lawyer.

Q Was it decorated nicely or shabbily?

A Very nicely. He has antique furniture. His is the nicest office there.

Q So, then, because of the way Mr. Arango acted and because of the objects that surrounded him like diplomas and his desk and the situation of his office, then that perpetuated your impression that he was an attorney; is that correct?

A Right.

Q After you took the immigration case to Mr. Arango, what did you want Mr. Arango to do?

A To get my husband's visa, his residency and get Social Security.

. . . . .

Q When did you find out that Mr. Arango was not a member of the Florida Bar?

A One day we went in to inquire. I went in by myself. We went to immigration and they were going to deport my husband. So I went to find out what happened, why wasn't he working on my husband's papers. And when he pulled the file out and opened it, I saw Rollo Karkeet's name signed on a form which had been signed and left blank because the secretary didn't have time to type it. And we asked him who is that man, why is his name on my papers. He goes to me, "You are going to be a problem client. Take your file and leave." And he wanted me to sign a release saying that Rollo Karkeet was releasing my records which I refused to sign because I didn't know who he was.

Q Did your husband ever receive permission from the Immigration Service to enter the U.S. on any sort of a permanent basis, some sort of work permit or any permanent status of any kind?

A While he was handling the case?

Q Yes.

A No. It was cancelled because of lack of representation or something at immigration but he never did anything.

Q Would you have been willing to repose the legal affairs of yourself and your husband in Mr. Arango's hands if you had known that he was not a member of the Florida Bar?

A No, I wouldn't have left it there.

(T-Vol. I, p. 121-123)

Respondent, in his brief at page 10, raises an argument about the quantity and quality of services performed by respondent for Mrs. Tamayo. This argument misses the point almost entirely. The referee found that Mrs. Tamayo reasonably believed respondent to be an attorney based on his conduct and hired him. It is the conduct of respondent in "holding himself out" as an attorney that is at issue in this particular transaction. Respondent's conduct clearly violates prior decisions of this Court such as The Florida Bar v. Walzak, 380 So. 2d 428 (Fla. 1980), The Florida v. Bar Moran, 273 So. 2d 390 (Fla. 1973), and The Florida Bar v. Fuentes, 190 So. 2d 748 (Fla. 1966).

As the referee suggested (Ref. Rept, p. 7) the Fuentes case is informative on this issue: there this Court enjoined the use of the term,

> "Notario," "Notario Publico," "Consultoria" and any other translation of the term "Notary Public," or any other term denoting that the respondent is authorized to practice law . . . (emphasis added)

Accordingly, the evidence produced clearly justified the referee in his finding that respondent held himself out as an attorney to Elisa Tamayo.

ISSUE SEVEN - THE REFEREE'S SUPPLEMENTAL REPORT

The respondent argues that the referee's supplement report "cannot stand" because of a simple typographical or transcribing error. Respondent complains because the Supplement Report refers to "direct" criminal contempt instead of "indirect" criminal contempt. This faux pas should be treated as completely harmless by this Court since the Supplement Report recommends the sanction for respondent (in the very next sentence after the reference to "direct") by correctly referring to the section of the Integration Rule which governs the indirect criminal

contempt portion of this proceeding. Further, as the respondent states in his brief (p. 11) "As this Court is aware, the basis for the Petition heretofore filed in this cause against Respondent was laid upon allegations of indirect criminal contempt."; thus demonstrating that respondent has known throughout these proceedings that the petitioner sought a finding of indirect criminal contempt. Therefore the referee's supplemental report is not prejudicial to the respondent in any way.

ISSUE EIGHT - THE RECOMMENDED PENALTY

The respondent complains, without citing any authority, that the recommended penalty is too severe. On the contrary, this respondent shows no remorse when confronted with the evidence of his violation of the Integration Rule. His attitude gives no evidence of a spirit of cooperation. In his testimony at the final hearing, he adamantly denied the material allegations of the petitioner's case. As the record and findings of the referee show, the respondent is one of the most, if not the most, serious U.P.L. violator to come before this Court. Respondents in prior U.P.L. cases have received jail terms as in Walzak (concurrent sentence); The Florida Bar v. Scussel, 240 So. 2d 153 (Fla. 1970) (sentence suspended upon payment of fine); and In re The Florida Bar In re Lucille E. Moran, 317 So. 2d 754, (Fla. 1975) (sentence suspended upon desist from U.P.L.). Fines have previously been levied, for example: 1) The Florida Bar v. Joyce, 299 So. 2d 27 (Fla. 1974), 2) The Florida Bar v. Lugo-Rodriguez, 317 So. 2d 721, (Fla. 1975), 3) The Florida Bar v. Neadel, 297 So. 2d 305 (Fla. 1974), and 4) The Florida Bar v. Escobar, 322 So. 2d 25 (Fla. 1975). Viewed in the context of these precedents, the referee's recommendation for sentencing is reasonable and suited to the violations and attitude of this respondent.

ISSUE NINE - UNCONTESTED FINDINGS OF FACT

The respondent did not contest the referee's findings of fact in paragraphs 1-6 and paragraph 11 of the referee's report. Petitioner submits that the Court's attention should particularly be drawn to two items within those findings. First, in paragraph 3, the referee made a finding regarding the respondent's office and found, "The respondent presented himself in this capacity to the public clothed in the trappings of an attorney." This finding, of course, places the respondent in violation of the Fuentes, Moran, Walzak line of cases as previously discussed. Second, in paragraph 6, the respondent was found to have " . . . supervised the work of several attorneys, including Blas E. Padrino. . . . " This finding puts the respondent in violation of The Florida Bar v. Savitt, 363 So. 2d 559, (Fla. 1978) where a non Florida Bar member was enjoined from supervision of persons admitted to The Florida Bar.

These two additional findings of fact when added to those previously considered should serve to convince the Court to follow the recommendations of the referee with regard to sentencing.

Conclusion

The Findings of Fact made by the referee should be approved and adopted by the Court since they clearly pass muster for review on appeal under the standard established by the Consolidated decision.

The referee's findings show that the respondent is a recalcitrant and unrepentant violator of the U.P.L. rules. Some witness testimony in the record shows complaints by persons who unwittingly used the respondent's services and other testimony refers to harm and damage suffered as a result of respondent's work.

Reference to prior decisions of this Court demonstrates that the referee's recommendation for punishment of the respondent conforms to precedent and is well suited to respondent's attitude and proven violations.

Accordingly, petitioner urges the Court to: 1) Reaffirm the Permanent Injunction Against U.P.L., 2) Fine the respondent $2500.00, 3) Imprison the respondent for five months, and 4) Tax the costs of this proceeding against respondent.

Respectfully submitted,

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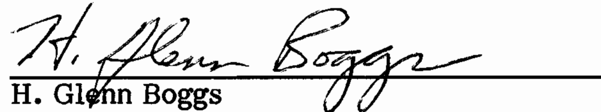

H. Glenn Boggs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was mailed to Mr. R. Alan Hale, attorney for respondent, Litigation Building, 3rd Floor, 633 South Andrews Avenue, Fort Lauderdale, Florida 33301, and Honorable Robert P. Kaye, Referee, 1351 N.W. 12th Street, Metropolitan Justice Building, Miami, Florida 33125, this 8th day of February, 1984.

H. Glenn Boggs