IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO.: 62,710

FLORIDA BAR,

Petitioner,

v.

TERRENCE E. ROSENBERG,

Respondent

INITIAL BRIEF OF RESPONDENT

TERRENCE E. ROSENBERG
79 North Hibiscus Drive
Miami Beach, Fla. 33139
(305) 325-2016

Respondent.

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INTRODUCTION

This matter concerns a two count Bar Grievance proceeding againstt the respondent. The first count charges that the respondent neglected a legal matter entrusted to him, the second matter charges that the conviction of a minimum housing violation affects the respondent's fitness to practice law. Respondent denies both. The Bar suggests, and the referee recommends a suspension for (90) days from the practice of law,the respondent contends that even if he is guilty, the penalty should be no more than a public reprimand.

The Exhibits are referred to as numbered in the transcript, the transcript is referred to as "T".

POINTS ON APPEAL

I WHETHER THE REFEREE ERRED IN FINDING THE RESPONDNET GUILTY OF NEGLECTING A MATTER ENTRUSTED TO HIM

II WHETHER THE REFEREE ERRED IN HOLDING THE RESPONDENT GUILTY OF CONDUCT ADVERSELY AFFECTING THE RESPONDENT'S FITNESS TO PRACTICE LAW FOR VIOLATION OF A CITY MINIMUM HOUSING ORDINANCE

III WHETHER THE REFEREE SHOULD HAVE RECOMMENDED A PUBLIC REPRIMAND RATHER THAN A (90) DAYS SUSPENSION

STATEMENT OF THE FACTS

As to the First Count of the Complaint, the Respondent undertook representation of a client in Washington D.C., Capital Cycle Corporation at the request of an attorney in that area, and in connection therewith filed a lawsuit for damages for delivery of defective merchandise. The Respon. requested that certain information be provided by the client (Exhibit 12); requested that interrogatories propounded by the defendant answered (Exhibit 14); again requested that the client answer the interrogatories (4) and (6) months later (Exhibit 17, 18). Exhibit 19 shows that the client was aware of the requirement of the interrogatories being completed....."spoke to Rosenberg..... I said I'd try to get him the interrogatories next week."

The client testified at the grievance committe meeting that he did not believe that he ever sp0ke with the Respondent (T. Page 121). But, when he was asked why the interrogatories were not answered and treturned to the Respondent, the client said "No, I can't explain that at all, and that is a mystery to me too." The client finally responded to the request for completed interrogatories one and one half year later (approximately), on June 26, 1978 (Exhibit 26), some (6) months after the third or fourth request was sent to counsel for the Plaintiff in Washington D.C. (Exhibit 20).

Similarly the complainant delayed in provided the funds for a non-resident cost bond, after the defendant moved for the bond to be provided according to the rules. The complainant did not provide the bond for nearly a year, despite repeated requested from the respondent(Exhibt 12, 15, 21). Finally, the case was dismissed for failure to provide the cost bond timely, and

refiled by the respondent.

Subsequently, the respondent was notified by the complainant that he was discharged from the case. He called the complainant and informed him that he would refile the case only to make sure it was timely, and turn over the file to the new attorney for complainant as soon as requested. (Exhibit 30, T. Page 113, P. 121, copy of the respondent's phone bill, proving the call to the complainant. The Complainant confirmed that he had terminated the services of the respondent (T., Page 129); " I don't feel that we re-engaged him , no".

Respondent received no correspondence from the complainant from January 26, 1979, until the present date. In December 1980, the Florida Bar received the complaint against the respondent by this complainant. It is the respondent's position that all of the delays were caused by the complainant's failure to cooperate with counsel, and that the complainant terminated the services of the respondent and never reinstated the attorney-client relationship. The complainant failed to employ new counsel to pursue the case, never contacted the respondent (Exhibit 32, shows a letter addressed to the wrong address, not received by the respondent), and ultimatley chose to let his case be dismissed and to attempt to secure monetary damages, through the use of the Florida Bar grievance machinery.

The referree apparently misconstrued the evidence, and the recommendation should be reversed by this honourable Court.

The second count in the Bar's complaint deals with the conviction of the respondent for (5) separate misdemeanor counts

involving the same property, the same violations, on (5) separate days in approximately (1) weeks time. It is the only time in the history of the ordinance, that the defendant was sentenced to jail for minimum housing violations, and smacks of unequal protection, of prejudice by the Court, of politics, and of a complete lack of Constitutional protection. That case is presently under a 3.850 collateral attack in the County Court, whilethe United States District Court has stayed any execution of sentence, pending a complete review by the State Court system, and the Habeas Corpus argument in the United States District Court after exhaustion takes place in the State Court system.

The Florida Bar initiated this complaint by sending the respondent a copy of a newspaper article, with a "please give us your position on this " letter. The conviction on these charges even if upheld, would not bear on the fitness of the respondent to practice law, since the case only has to do with minimum housing violations, which were the first and only conviction of the respondent for any misdemeanor or other crime, ever. There is no moral turpitude, no damage or injury to a client or to the public, no mismanagement of a client's funds, knowing or willful violation of any law. It is unrefuted that the respondent was not an owner of the subject real property, that he was treated in a manner inconsistent with all other "violator", and that the Code has been decriminalized some several months after that case, so that such a conviction of a misdemanor is no longer possible.

Counsel for the respondent in that case was subsequently charged with drug violations and disbarred, the Court was so biased

that it ultimately recused itself.

The Bar states that it can look beyond the conviction of a misdemeanor to determine unethical conduct, even if the defendant is acquitted, but then why can the Court not consider the merits of the conduct even in the instance when the defendant is convicted. This case is long from being resolved, it in involves serious Constitutional issues, and no sanction should be granted based on this case until the case is confirmed or reversed, nor should any sanction be based on the matters presented in this case which do not in any way affect the respondent's fitness to practice law.

THE REFERREE ERRED IN FINDING THAT THE RESPONDENT IS GUILTY OF NEGLECT

The honourable Referreein this case erred in finding the respondent guilty of neglecting a legal matter entrusted to him. It is clear from the record that the respondent did undertake the legal matter mby correspondence with the defendant, and filing suit for damages. It is clear from the record that the respondent was thwarted from pursuing the case by the complainant's delay of approximately one and one half years in providing the answers to interrogatoriesrequested by ther respondent. (Exhibit 17, 18, 19, 20, 26, T. 121); and the respondent was equally thwarted by the complainant's failure to file a fee for a non-resident cost bond for many months, until after the case had been dismissed.

The complainantadmits that he terminated the services of the respondent, (T. 129), but complains of the respondent after the date of termination, and nearly (2) years later filed a complaint with the Florida Bar, with no communication with the respondent from the date of termination on January 26, 1979, until the Bar grievance was filed on December 20, 1980.

THE REFERRE ERRED IN HOLDING THE RESPONDENT GUILTY OF CONDUCT ADVERSED AFFECTING HIS ABILITY OR FITNESS TO PRACTIVE LAW FOR VIOLATION OF A CITY MINIMUM HOUSING ORDINANCE

The Respondent is presently appealing the conviction and sentence for violations of the minimum housing ordinance of the City of Miami Beach, based on his contention that he was the only person ever sentenced to jail for violation of the ordinance, that the sentence and conviction were illegal since they violated the respondent's right to equal protection under the law, and the City treated this respondent, who had on many previous occasions successfully litigated against the City of Miami Beach, differently than other defendants. This was the first offense for the respondent, it did not represent a consistent pattern, or a criminal tendency.

The Conviction for minimum housing violations does not in any manner affect the respondent's ability or fitness to practice law or adversely affect the public. The case involves no moral turpitude, no fraud, no mishandling of a case or funds of a client, no sharp practices with regard to other attorneys, or any other matters with any bearing of the respondent's fitness to practice law. The law of the City of Miami Beach was changed in 1980, and now provides that the violation of the minimum housing violations is a matter to be taken before a municipal board who can levy fines against the property not assess Criminal penalties. The only reason that the Bar has pursued this matter, or even was aware of this matter, is the respondent's active fight to vindicate himself which has resulted in publicity in the media.

THE REFERREE ERRED IN ORDERING A (90) DAYS SUSPENSION FROM THE BAR

Respondent would show that a (90) days suspension is unusually severe and harsh under the facts of this case. The respondent previously received a private reprimand for keeping trust accounts properly, which involved the respondent's own family corporations or funds, and did not involve any fraud. The respondent received a public reprimand for sending uncertified copies of pleadings (failing to certify copies were sent), for representing his own corporation at a deposition, and for alleged failure to send copies of pleadings to opposing counsel, and for alleged harassment by filing interlocutory appeals which were either voluntarily dismissed or dismissed for filing fees. Neither of these matters involve moral turpitude,dishonesty, cheating, fraud, clients funds, or any other serious matters. These prior violations are of record, for minor misconduct of an attorney.

The two counts in the instant case involve only minor matters as well. The first count involves the conduct of a case with a client, in which work was clearly performed, and at best, the conduct of the client provides substantial mitigation for the respondent, where the client was clearly neglectful in pursuing the things he needed to do to advance his own case. The second count, involving minimum housing cases has little or nothing to do with the respondents fitness to practice law. The cases support a public reprimand rather than suspension for minor misconduct.

Florida Bar v. Thompson(1979,Fla), 376 So 2d 6, Public reprimand where attorney failed to act on case for 3 1/2 years; Florida Bar v. Tobin (1979, Fla), 377 So 2d 690, public reprimand where attorney failed to maintain client trust fund records, neglected a legal matter; Florida Bar v. Snow(1981,Fla.), 397 So 2d 395, public reprimand was given rather than the suspension requested by the Florida Bar; Florida Bar v. Rosetti (1979,Fla) 379 So 2d 362, Five counts of violations of cannons of ethics including neglect of a matter warranted only reprimand; Florida Bar fv. Gaer(1980,Fla), 380 So 2d 428, Sharing fees with bondsman, soliciting business from clients warranted only reprimand, not (60) days suspension sought by the Bar; Florida Bar v. Sepe 380 So 2d 1040, Soliciting sexual favors from defendant's wife while judge warranted reprimand only, Florida Bar v. Gray, 380 So 2d 1292, Neglect of a matter, and intentional failure to carry out contract of employment, as well as failure to take steps to avoid forseeable negative results for client warranted only reprimand Florida Bar v Sterling, 380 So 2d 1295(1980) failure to deliver a $5,000 check to the proper party was punished by reprimand; Florida Bar v Page, 381 So 2d 1357, Failure to file a foreclosure suit that the attorney was paid for, refusal to return fees when demanded by client was punished by reprimand; Florida Bar v. Glick 383 So 2d 642, Improper handling of breach of contract suit and quiety title suit, resulted in a public reprimand, not the Bar's recommended (60) days suspension; Florida Bar v. Larkin, 370 FSo 2d 371, where the attorney failed to act within the statutory limits, a reprimand would be given; Florida Bar v. Bratton(1980) 389 So 2d 637, Reprimand even where dishonesty, fraud, etc., on

attorney's part; Florida Bar v. Alford (1981, Fla)400 So 2d 458, Public reprimand for neglect case, Florida Bar v. Gaskin (1981, Fla), 403 So 2d 425, Reprimand where the attorney was both neglectful of the case, and lied as to the status of the acase to his client; Florida Bar v. Finta (1983, Fla), 427 So 2d 721, Public reprimand for violations of trust accounts, and fees rules.

The Florida Bar has cited several cases which are distinguishable in support of its position. Florida Bar v. Rubin, 362 So 2d 12, for cumulative misconduct, which is not the case at hand, where the prior record indicates minor misconduct of an unrelated type; Florida Bar v. Byron, which involves a case dismissed with prejudice on top of other serious violations, (400 So 2d 13); Florida Bar v. Baron 408 So 2d 1050, which involved several counts of serious misconduct, and a record of serious misconduct, involving dishonesty; Florida Bar v. Grant, 432 So 2d 53 which involved no advice to the client for two years after filing suit.

CONCLUSION:

The respondent was not guilty of neglecting a legal matter entrusted to him, he simply could not perform because of the failure of the client to provide what was needed over long periods of time. The client discharged the respondent on January 29, 1979, and never contacted him again, nor did he have any "new" counsel contact the respondent to take over the file, as he stated that he would. On December 20, 1980, nearly two years after firing the respondent, the client filed a complaint with the Florida Bar. The Respondent was convicted of minimum housing violations, which conviction has been the subject of a continuing effort to appeal, and is presently under Stay from the United States District Court, while a 3.850 appeal winds its way through the State Court system, to be resolved either in the State Courts of the State of Florida, or the United States Courts. In any event, this has no bearing on the fitness of the respondent to practice law. Accordingly, the respondent would seek to overturn the recommendation of the referee, as to guilt; and if not as to guilt; as to the penalty.

CERTIFICATE:

I HEREBY CERTIFY that a true copy of the foregoing was sent by U.S. Mail on this 11 day of March, 1985, to the Florida Bar 444 Brickell Ave, Miami, Fla.

TERRENCE E. ROSENBERG, ESQ.
Respondent
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325-2016