

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR

Petitioner,

vs.

Case No. 64,079

WILLIAM K. MICKENS, JR.

D/B/A EVICTORS OF FLORIDA, INC., and/or  
RAPID DIVERSIFIED SERVICES, INC.

Respondent

**FILED**

SID J. WHITE

NOV 13 1984

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

REFEREE'S REPORT AND RECOMMENDATIONS

Pursuant to The Florida Bar Integration Rule, article XVI, Section III, A(4), the undersigned referee submits findings of fact, conclusions of law and recommendations for consideration by the Supreme Court of Florida in the instant unauthorized practice of law proceeding.

Statement of the Case

On August 11, 1983, Petitioner, The Florida Bar, filed a petition in the Supreme Court of Florida, charging Respondent, William K. Mickens, Jr., d/b/a Evictors of Florida, Inc. and Rapid Diversified Services, Inc., with engaging in unauthorized practice of law by preparing legal documents for representing landlords in tenant eviction proceedings in County Court in and for Dade County, Florida.

The Court issued a Rule to Show Cause and Order Appointing Referee on September 2, 1983. On August 7, 1984, Petitioner's counsel, Joel N. Rosenthal, and Respondent's counsel, Charles A.

Gould, Jr., filed with the referee a Stipulation for Settlement, set forth below in the findings of fact. Following review of the case, the instant report and recommended order is entered herein.

FINDINGS OF FACT

The following are findings of fact according to the STIPULATION FOR SETTLEMENT submitted by the parties who agree that:

1. Respondent has prepared and served three-day tenant notices (F.S.83.20) and filed and processed removal of tenant cases in County Court, Dade County, acting as agent for the plaintiff landlords, both individual and corporate, in the cases set forth in the petition.

2. That the properties involved in the tenant removal cases have been both commercial and residential.

3. That in preparing and serving said three-day notices and in filing and processing said removal of tenant cases, Respondent was not acting in the capacity of property manager or general business agent of the plaintiffs.

4. That Respondent agrees to cease and desist all such activities except as may be authorized under Sections 83.20 and 83.21, Florida Statutes, and guidelines promulgated by and subject only to review by the Supreme Court.

5. That Respondent is not an attorney licensed to practice law in the State of Florida.

6. That petitioner agrees that it will not move for any fine or other penalty against the Respondent on account of any of his

activities complained against in the petition which occurred prior to the date of the approval of this stipulation by the referee.

#### CONCLUSIONS OF LAW

The scope of representation by non-lawyer agents of landlords in tenant eviction actions is governed by both statute and caselaw. As discussed below, the combined effect of these authorities is that a non-lawyer agent of a landlord may file an initial complaint for distress of rent or eviction only in a non-residential tenancy; but, regardless of the tenancy involved, such agent may not represent the landlord in the prosecution of the case.

Chapter 83, Florida Statutes, governs landlord-tenant eviction actions. Chapter 83 distinguishes non-residential tenancies from residential tenancies in Parts I and II, respectively. Specifically, Chapter 83 provides the following:

- 1) In non-residential tenancies (Chapter 83, Part I)
  - a) the person to whom rent is due, or the person's attorney or agent, may file a complaint for distress of rent in the appropriate county court, §83.11, Florida Statutes (1983);
  - b) the landlord, or landlord's attorney or agent, may file a complaint for tenant removal in the appropriate county court, §83.21, Florida Statutes (1983).
- 2) In residential tenancies (Chapter 83, Part II)
  - (a) the landlord may file the complaint for removal of tenant in the appropriate county court, §83.21, Florida Statutes (1983). "Landlord" is defined as

the owner or lessor of a dwelling unit, §83.43(3), Florida Statutes (1983).

Chapter 83 restricts the role of a landlord's non-attorney agent in eviction actions exclusively to non-residential tenancies. In non-residential tenancies, Part I of the statute permits the non-attorney agent to file the initial complaint for distress of rent or tenant eviction. In contrast, residential tenancies are governed by Part II of the statute, a completely separate part of the chapter stating that only the landlord may file a complaint for eviction. Because Part II does not reference the provision in Part I for filing eviction or distress of rent actions, and only considers actions filed by the landlord, the statute (§83.59(2)) may be construed as excluding non-attorney agents from filing on behalf of a residential landlord.

Caselaw has further restricted the role of a non-attorney agent by prohibiting such agent from representing a corporation. Quinn v. Housing Authority of Orlando, 385 So.2d 1167 (Fla. 5th DCA 1980); Magnolias Nursing, etc. v. Dept. of Health, 428 So.2d 256 (Fla. 1st DCA 1982); Nicholson Supply Co. v. First Federal Savings & Loan Assn., 184 So.2d 438 (Fla. 2d DCA 1966). These cases have held that since a corporation is not a natural person, a corporation must designate an attorney to represent it. Thus, a corporate landlord must designate an attorney to sign the initial complaint in all eviction actions, regardless of the tenancy involved. As a result, a non-attorney agent may file the initial complaint in non-residential tenancies only where the landlord is an individual, not a corporation.

Both Parts I and II of Chapter 83 provide that proceedings initiated under §§83.11, 83.21, or 83.59 are to be construed as summary proceedings under Chapter 51, Florida Statutes (1983). However, the Florida Rules of Summary Procedure have been found not to apply to proceedings initiated under Chapter 83 and conducted

according to Chapter 51, on the basis that the remedy sought is not within the scope of those contemplated by the Supreme Court for actions under the rules. Johnstown Properties Corporation v. Gabriel, et al., 50 Fla. Supp. 138 (Fla. Polk Cty. Ct. 1980); Assured Realty, Inc. v. Brown, 48 Fla. Supp. 180 (Fla. Orange Cty. Ct. 1978). Accordingly, Florida Rule of Summary Procedure 7.050, which could permit a landlord to proceed pro se where an action is brought under the Rules of Summary Procedure, is inapplicable to tenant eviction actions. Id.

A non-attorney may not represent another in court. The Florida Bar v. Walzak, 380 So.2d 428 (Fla. 1980); The Florida Bar v. Scussel, 240 So.2d 153 (Fla. 1970). This applies even if one is the authorized agent of a party. The Florida Bar v. Burns, 287 So.2d 297 (Fla. 1973). Thus, even though Chapter 83 permits a landlord's non-attorney agent to file the initial complaint for tenant eviction actions in non-residential tenancies, the agent may not represent the landlord in the prosecution of such case.

The Florida Supreme Court has articulated various examples of acts constituting the unauthorized practice of law including, without limitation, the following: (1) counseling clients about legal matters, The Florida Bar v. Brumbaugh, 355 So.2d 1186 (Fla. 1978); The Florida Bar v. Kaufmann, 452 So.2d 526 (Fla. 1984); (2) appearing in court or in proceedings which are part of the judicial process, The Florida Bar v. Kaufmann, supra; and (3) typing or printing information in legal forms where the client-applicant orally communicates such information to the non-attorney, The Florida Bar v. Brumbaugh, supra; The Florida Bar v. Furman, 276 So.2d 378 (Fla. 1979). The reason for prohibiting the unauthorized practice of law is ". . . to protect the public from being advised and represented in legal matters by unqualified persons over whom the judicial department can exercise little, if any, control in the matter of infractions of the code of conduct which, in the public interest, lawyers are bound to observe." State v. Sperry, 140 So.2d

587, at 595 (Fla. 1962). Thus, in matters regarding tenant eviction actions, a landlord's non-attorney agent may not: (1) counsel the landlord about legal matters regarding tenant eviction actions, (2) appear in court or in any proceeding which is part of the tenant-eviction judicial process, or (3) type or print information on tenant eviction forms unless the landlord gives such information to its non-attorney agent in writing.

#### RECOMMENDATION

On the basis of the preceding findings of facts and conclusions of law, the undersigned referee recommends that the Supreme Court enter the following order:

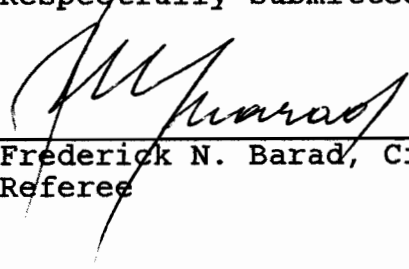
- I. That Respondent be permanently restrained and enjoined from conducting the following activities which constitute the unauthorized practice of law:
  - A. Filing the initial complaints for residential landlords and corporate landlords;
  - B. Counseling landlords about legal matters regarding tenant eviction actions;
  - C. Typing or printing information on the tenant eviction forms set forth in the petition where the landlord orally communicates such information to the respondent;
  - D. Appearing in court or in any judicial proceeding which is part of the tenant eviction process.
- II. That Respondent be permitted to conduct the following activities:

- A. Filing the initial complaint in nonresidential tenant eviction actions provided the landlord is a natural person, not a corporation;
- B. Typing or printing information on the tenant eviction forms set forth in the petition where the landlord furnishes such information to respondent in writing.

III. That Respondent be assessed the costs of this proceeding.

Dated this 8th day of <sup>November</sup>~~October~~, 1984.

Respectfully submitted,

  
Frederick N. Barad, Circuit Judge  
Referee

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