

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

CASE NO. 65,374

v.

The Florida Bar Case
No. 15C82F39

DAN HAYES,

Respondent.

FILED
SID J. WHITE
JUN 24 1985
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS: The undersigned has been duly appointed as Referee in this cause to conduct disciplinary proceedings in accordance with Florida Bar Integration Rule, article XI.

The Respondent has submitted a Conditional Guilty Plea which pleads guilty to The Florida Bar's Complaint. The Designated Reviewer of The Florida Bar has approved the Respondent's Conditional Guilty Plea. A hearing was held on the Guilty Plea on May 24, 1985, at which time the Respondent affirmed his written guilty plea. I approve the Guilty Plea.

The following attorneys appeared as counsel for the parties:

For The Florida Bar - Jacquelyn Plasner Needelman

For the Respondent - J. Ralph Mabie.

II. FINDINGS OF FACT AS TO EACH ITEM OF MISCONDUCT OF WHICH THE RESPONDENT IS CHARGED.

After considering all of the pleadings and evidence before me, I find that:

1. The Respondent, Dan Hayes, is and at all times hereinafter mentioned was, a member of The Florida Bar, subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

AS TO COUNT I

2. In or about the summer of 1973, one John Bucherie retained Respondent concerning Mr. Bucherie's wrongful demotion and subsequent dismissal on June 23, 1973, from employment with Nabisco, Inc.

3. Respondent was retained by Mr. Bucherie to pursue any and all causes of actions against Nabisco, Inc., as well as to attempt to regain Mr. Bucherie's employment with the company.

4. At the time of his termination, Mr. Bucherie had been employed by Nabisco, Inc., in excess of twenty-six (26) years.

5. During the years 1974, 1975 and 1976, Mr. Bucherie called Respondent's office regarding the status of his case, and was repeatedly advised by the Respondent's secretary that the Respondent was working on his case.

6. Mr. Bucherie was constantly advised by the Respondent's secretary that the Respondent was busy, out of town, or in trial and could not come to the phone.

7. In or about 1977, Mr. Bucherie became concerned that it was approaching four (4) years since his termination, that the Statute of Limitations would shortly be expiring. Mr. Bucherie expressed his concern to Respondent's secretary and was advised that there was no Statute of Limitations on this type of case.

8. In or about 1977, as Mr. Bucherie became more and more concerned about the status of his case, he wrote to the Respondent attempting to make an appointment to discuss the status of his case with the Respondent.

9. Between 1977 and 1982, the Respondent made and cancelled numerous appointments with Mr. Bucherie, but never met with Mr. Bucherie to discuss his case.

10. From 1977 until 1982, Respondent and his office led Mr. Bucherie to believe that his case was being properly handled by Respondent.

11. Respondent failed to return Mr. Bucherie's telephone calls.

12. Respondent failed to answer questions asked in Mr. Bucherie's September 9, 1981 letter, which requested a synopsis of his case.

13. On June 12, 1979, approximately five (5) years and eleven (11) months after being retained, Respondent filed a complaint styled John T. Bucherie, Plaintiff, vs. Nabisco, Inc., a New Jersey Corporation, Defendant, in the United States District Court for The Southern District of Florida, Civil Division, Case No. 79-8195, CIV-JAG.

14. The complaint filed by Respondent alleged contractual and constitutional violations by Nabisco, Inc.

15. On or about July 17, 1979, Nabisco, Inc. filed a Motion to Dismiss and Memorandum of Law stating that the action was barred by the Statute of Limitations and that the complaint failed to state a cause of action and alleged no facts which would constitute a violation of the Constitution of the State of Florida or the United States.

16. On July 31, 1979, The Honorable Jose. A. Gonzalez, Jr., United States District Judge, entered an order granting Nabisco, Inc.'s Motion to Dismiss.

17. The Respondent failed to advise Mr. Bucherie that his case had been dismissed.

18. The Respondent led Mr. Bucherie to believe that his lawsuit was pending and being pursued by the Respondent.

19. The Respondent corresponded with Mr. Bucherie subsequent to the July 31, 1979 dismissal of his lawsuit, but never advised Mr. Bucherie in said correspondence of the dismissal.

20. Respondent never advised Mr. Bucherie that his lawsuit was dismissed because the Respondent had missed the time period allowed by the Statute of Limitations.

21. By not filing a lawsuit on behalf of Mr. Bucherie alleging a federal age discrimination against Nabisco, Inc., Respondent has precluded Mr. Bucherie from filing such a suit against Nabisco, Inc., although age discrimination was discussed by the Respondent and Mr. Bucherie.

22. Mr. Bucherie's case was the first wrongful employment termination case handled by the Respondent and the Respondent was not competent to handle said matter.

23. The Respondent failed to associate on the case an attorney competent to handle employment termination matters.

24. Upon retention by Mr. Bucherie, Respondent failed to ascertain the appropriate period of Statute of Limitations and the appropriate causes of actions available to Mr. Bucherie's case.

25. The Respondent has stated that he had no intention to deceive his client, but that he did not know how to tell his client of what had occurred in the case.

26. I find that the Respondent intentionally concealed the dismissal of Mr. Bucherie's lawsuit, but not with an intent to defraud Mr. Bucherie.

27. The concealment by the Respondent of the dismissal of Mr. Bucherie's lawsuit did not aggravate the situation with the stocks.

AS TO COUNT II

28. In or about 1974, Respondent was retained by Mr. John Bucherie to represent him concerning problems Mr. Bucherie was encountering regarding receiving proper credits for stock he owned in Nabisco, Inc., at the time of his termination from Nabisco, Inc.

29. Respondent advised Mr. Bucherie that he would take care of the stock problem.

30. Respondent failed to take any action concerning Mr. Bucherie's Nabisco stock and neglected the matter.

31. The value of Mr. Bucherie's Nabisco stock has been jeopardized due to the Respondent's neglect.

III. RECOMMENDATIONS AS TO WHETHER OR NOT THE RESPONDENT SHOULD BE FOUND GUILTY:

As to each Count of the Complaint, I make the following recommendations as to guilt or innocence:

AS TO COUNT I

I recommend that the Respondent be found guilty in accordance with his Conditional Guilty Plea of the following violations: Disciplinary Rules 1-102(A)(1), (4) and (6); 6-101(A)(1), (2) and (3); and 7-101(A)(1), (2) and (3) of the Code of Professional Responsibility.

AS TO COUNT II

I recommend that the Respondent be found guilty in accordance with his Conditional Guilty Plea of the following violations: Disciplinary Rules 6-101(A)(3); 7-101(A)(1), (2) and (3) of the Code of Professional Responsibility.

IV. RECOMMENDATIONS AS TO DISCIPLINARY MEASURES TO BE APPLIED:

I recommend that the Respondent receive a public reprimand to be administered by publication in the Southern Reporter and Respondent's personal appearance before the Board of Governors of The Florida Bar.

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD:

Age: 42

Date admitted to The Florida Bar: 1968

Prior disciplinary convictions and disciplinary measures to be imposed: None

VI. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED:

Administrative Costs	
Grievance Committee Level	\$150.00
Referee Level	150.00
Court Reporter and Transcript	
September 16, 1982, grievance committee hearing	282.50
Copying costs	12.50
Deposition of Lucille Dunnan	<u>94.82</u>
Total Costs due The Florida Bar	\$689.82

The aforesaid costs are to be taxed against the Respondent, and execution should issue for all of the aforesaid costs, together with interest therein at the rate of 12% per annum if costs are not paid within thirty (30) days of a final disciplinary order in this cause.

DATED THIS 19th day of June, 1985.


BURTON C. CONNER
Referee

Copies furnished to:
Jacquelyn Plasner Needelman, Bar Counsel
J. Ralph Mabie, Attorney for Respondent
John T. Berry, Staff Counsel

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Court Reporter and Transcript	
September 16, 1982, grievance committee hearing	282.50
Copying costs	12.50
Deposition of Lucille Dunnan	94.82
Court reporter and transcript	
May 24, 1985 Referee hearing	<u>102.70</u>
Total Costs due The Florida Bar	<u>\$792.52</u>

The aforesaid costs are to be taxed against the Respondent, and execution should issue for all of the aforesaid costs, together with interest therein at the rate of 12% per annum if costs are not paid within thirty (30) days of a final disciplinary order in this cause.

DATED THIS 19th day of June, 1985.


BURTON E. CONNER
Referee

Copies furnished to:

Jacquelyn Plasner Needelman, Bar Counsel
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