

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,
Complainant,

CASE NO. 67,638
(TFB #13A85H40)

v.

H. EUGENE JOHNSON,
Respondent.

_____ /

FILED
APR 17 1987
CLERK OF THE SUPREME COURT
BY _____ *ph*

THE FLORIDA BAR'S OPENING BRIEF

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STATEMENT OF THE FACTS AND OF THE CASE

On or about March 1, 1983, respondent was retained by Kermit Hines, who had secured a lease on the T-Bar off the Bahamas to salvage what he believed to be a multi-million dollar treasure find. (Tr. p.11, l.19). Respondent was to provide legal assistance as necessary to facilitate the anticipated salvage. Respondent advised Mr. Hines that partnership agreements he had entered into with prior partners were not binding. Respondent then drafted a Limited Partnership Agreement for Mr. Hines, with respondent as the sole limited partner. (Tr. p. 15, l.16). The Limited Partnership Agreement was then submitted to the Secretary of State. (See Appendix A). The Partnership Agreement indicated that respondent had contributed \$5,000.00. However, respondent did not make any cash contribution to the partnership prior to or at the time of filing the document.

On or about May 3, 1984, Mr. Hines' lease in the Bahamas was cancelled based on allegations that he was illegally removing treasure without notifying the Bahamian Government of his finds. (p. 29 l.19, p. 30 l.8). Respondent, on behalf of Mr. Hines, protested the cancellation, but it was not rescinded. Respondent pressed Mr. Hines to return to the Bahamas to conduct additional salvage work, and participated in the following covert plan to avoid detection by the Bahamian Government. On or about May 5, 1984, Mr. Hines transferred his 34 foot salvage vessel to respondent by what Mr. Hines termed a "mock" bill of sale. (Tr. p. 43 l.21).

Respondent asserts that the transfer was to satisfy attorney's fees, while Mr. Hines states that it was simply part of the plan to deceive the Bahamian Government. Although documents necessary for actual transfer were signed, they were never recorded on any public records. (Tr. p. 44 l.18). The vessel was repainted, and the name on the outside of the vessel changed. (Tr. p. 42 l.13). Respondent then entered into a charter party agreement with Gene Martoglio, Mr. Hines' long term friend and crew member in most of the salvage operations. (Tr. p. 42 l.23). Actually, two charter party agreements were drafted with different time periods of hire to take into account repairs being made on the vessel. (Appendix B). The alleged purpose of placing the vessel under Mr. Johnson's name, drafting a charter party agreement with Mr. Martoglio, and repainting the vessel was to avoid possible confiscation of the vessel for violation of orders from the Bahamian Government pursuant to the cancelling of the salvage lease. Due to surveillance of the vessel after it reached Bahamian waters, the salvage operation was terminated and all involved returned to Florida. (Tr. p. 47 l.3). Respondent thereafter authorized the sale of the vessel by Mr. Hines. On or about July 24, 1984, with the knowledge and approval of respondent, a sale was completed to a Carl Brown. (Tr. p. 51 l.1 and p. 51 l.19).

On or about August 1, 1984, the respondent and Mr. Hines met to discuss winding up their partnership, and respondent agreed to

accept one half of the proceeds from the sale of the vessel. (Tr. p. 57 l.20). Mr. Hines requested a delay in payment and respondent agreed, with the proviso that he be given a silver coin collection as collateral. (Tr. 60, l.15).

On or about August 4, 1984, respondent called Mr. Hines' residence in the early morning and demanded that he be paid \$21,000.00 in cash by 2:00 o'clock that day. (Tr. p. 68, l.21 and Tr. 69, l.23). A letter written by respondent on August 6, 1984 suggests that the call was precipitated by Mr. Johnson's having heard allegations that Mr. Hines had undisclosed monies from the salvage operation. (Appendix C). Respondent informed Mr. Hines that unless he received payment as demanded, he would ruin Mr. Hines in the business community.

After not being paid at the dictated time, respondent engaged in a series of actions meant to coerce Mr. Hines into compliance by humiliation, embarrassment, and fears of damnation. Respondent notified Mr. Hines' bank of the alleged theft of the money from the sale of the boat. See Appendix "D", attached hereto. Respondent sent Mr. Hines letters dated August 6, November 18 and November 26, 1984, in which he prophesied that Mr. Hines would be subjected to damnation and torment. See Appendix "E", attached hereto.

Respondent also filed an affidavit for grand theft against Mr. Hines on October 13, 1984. After a thorough investigation, the State Attorney's Office refused to prosecute Mr. Hines.

After a lengthy final hearing, the referee found the respondent guilty based on the misrepresentation in the Limited Partnership Agreement, and based on the general tenor of the letters of August 6, November 18, and November 26, 1984. The referee recommended a private reprimand be administered by the Board of Governors. The Florida Bar Board of Governors voted to oppose the Report of Referee and seek a ninety one (91) day suspension.

SUMMARY OF ARGUMENT

Respondent's actions herein warrant more than a private reprimand as recommended by the Referee. Respondent's participation in the treasure and salvage operation followed by his attack upon Mr. Hines are an embarrassment to the legal profession. The Florida Bar Board of Governors has requested that the respondent be disciplined by a ninety-one (91) day suspension.

Respondent yielded to the lure of a potential multi-million dollar treasure. Respondent drafted and submitted to the Secretary of State a Limited Partnership Agreement that falsely represented that he contributed \$5,000.00 in capital. Respondent then engaged in a covert plan to allow Mr. Hines to return to the Bahamas after the cancellation of Mr. Hine's lease. The plan was designed to recover as much salvage as possible without detection from the Bahamian Government. Finally, when all of the treasure appeared impossible to reach the respondent set out on a course of conduct designed to humiliate and embarrass Mr. Hines into compliance.

Respondent's actions are an abuse of the legal system and further constitute an emotional attack upon his client, Mr. Hines.

ISSUE

WHETHER A LAWYER WHO FILES A DOCUMENT
CONTAINING A FALSE STATEMENT IN A BUSINESS
VENTURE AND UPON THE COLLAPSE
OF SAID VENTURE SETS OUT ON A PLAN TO
HUMILIATE AND DENIGRATE A CLIENT WARRANTS
MORE THAN A PRIVATE REPRIMAND.

ARGUMENT

The Referee found the respondent guilty of misconduct as the result of:

a) Executing and causing to be filed the Limited Partnership Agreement when he had no intent whatever of contributing \$5,000.00 to said Limited Partnership;

b) The writing of the three letters to Hines heretofore referred to.

(p. 3 Report of Referee)

The Limited Partnership Agreement (Appendix A) stated specifically that "each Limited Partner shall contribute to the Partnership as his agreed capital contribution the sum of \$5,000.00 for each unit." (Section III 3. Limited Partnership Agreement - p. 3). The Limited Partnership Agreement was dated April 25, 1983.

Respondent did not contribute \$5,000.00 in capital contribution to the Limited Partnership upon its filing with the Secretary of State. *State law* Section 620.04 Florida Statutes 1983, 1985, stated that "contributions of a limited partner may be cash or other property, but not services." (Section 620.04 was repealed effective January 1, 1987 and services are now permissible pursuant to Section 620.135 Florida Statutes 1986.)

The filing of a false statement in a public document alone would be sufficient to warrant a private reprimand. However, the

respondent's actions thereafter illustrate an even more serious disregard for the law and his client.

After Mr. Hines lost his lease in the Bahamas a plan was devised to make a last ditch effort to recover as much salvage as possible. It was apparent to all that if Mr. Hines was caught salvaging in the Bahamas after the cancellation of his lease, his ship and contents would be confiscated by that government. Mr. Hines and his crew mate, Gene Martoglio, testified that respondent participated in a plan to avoid detection and confiscation. (Tr. 40, l.21 and p. 225, l. 10). Mr. Hines ship was allegedly transferred to respondent. The vessel was repainted, and its name changed. Respondent then entered into Charter Agreement with Gene Martoglio, who posed as the captain when in reality Mr. Hines remained the captain. In fact, the Charter Agreements reflect Mr. Martoglio paid respondent \$1,000.00 for the chartering of his vessel, when in fact Mr. Martoglio paid nothing. (Tr. p. 224 l.22). The salvage operation was terminated after it reached Bahamian waters, as it appeared the crew was being watched. (Tr. p. 47, l.3).

After Mr. Hines returned to Florida there was a discussion with respondent as to the sale of the vessel to satisfy debts incurred by respondent in the last salvage effort. The ship was sold to a Carl Brown, and Mr. Hines returned to Tampa. (Tr. p. 51, l.1 and p. 51 l.19). Thereafter, respondent agreed to accept a coin collection as collateral for the proceeds of the vessel

and then changed his mind when he began to suspect Mr. Hines of chicanery.

Respondent then began his attack on Mr. Hines. On or about August 4, 1984, respondent called Mr. Hines' residence in the early morning and demanded that he be paid \$21,000.00 in cash by 2:00 o'clock that day. Respondent informed Mr. Hines that unless he received payment as demanded, he would ruin Mr. Hines in the business community. (Tr. p. 60, l.15).

After not being paid by the stated time, respondent followed up on his promises. On August 6, 1984, respondent wrote to the President of Independent Bank of Florida, advising him of "an attempted deception against your bank". (Appendix D). Respondent also wrote the first of three letters to Mr. Hines on August 6, 1984. (Appendix C). The respondent then filed an affidavit for grand theft against Mr. Hines on October 13, 1984, which was ultimately dismissed by the State Attorney's office.

The respondent next wrote two letters to Mr. Hines that are shocking and cannot be construed to be anything other than threatening. On November 18, 1984, ~~Respondent's~~ ^{just} letter advised

Mr. Hines ^{among other things} that "The Lord came to me in a vision Saturday night". "God has marked you for destruction. "Your end is near. Curse only yourself, for you alone have doomed yourself." ~~(Appendix~~

~~E.)~~ ~~On November 26, 1984,~~ ^{in a second letter} Respondent advised Mr. Hines that "the Lord has visited me again to report your continued stiff-necked rebellion." The letter demands the return of money

or suffer the torment of damnation. ^{18 here} The letter was signed "The Prophet", and acknowledged by the respondent to be his writing. (Appendix E.)

The instant case may well be one of first impression in the State of Florida, as the undersigned is unable to find any like case law. However, it would defy reason that the respondent could engage in such behavior and be disciplined by a private reprimand.

Surely this greatly exceeds limitations placed on methods by which an attorney can seek to collect his fees.

CONCLUSION

The respondent filed a public document knowing that it contained a false representation as to capital contribution. The respondent knew or should have known that the document, once filed, could be relied upon by potential investors who might have been misled.

The respondent then embarked on a series of acts that began with deception and ended with an attempt to humiliate and vilify his client. Accordingly, it is respectfully requested that respondent be disciplined by a ninety-one (91) day suspension.

Respectfully submitted,



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April 27, 1987