

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Petitioner,

vs.

CASE NO. 67,687

WILLIAM K. MICKENS, JR.,
d/b/a EVICTORS OF FLORIDA, INC.,
and/or RAPID DIVERSIFIED SERVICES, INC.,

Respondent.

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 and contempt proceeding.

STATEMENT OF THE CASE

On August 11, 1983, the Florida Bar filed a petition in the Supreme Court of Florida charging respondent, William K. Mickens, Jr., with sixteen acts of engaging in the unauthorized practice of law by preparing legal documents in tenant eviction proceedings involving both commercial and residential landlords. The petitioner and respondent filed with the referee a stipulation for settlement in which respondent admitted the actions forming the basis of the complaint and agreed to refrain from engaging in the unauthorized practice of law.

The referee recommended that the respondent be permanently enjoined from filing initial tenant eviction complaints for residential and corporate landlords; counseling landlords regarding legal matters; filling out eviction forms where the landlord orally communicates the information to be filled in; and appearing

in court or any other judicial tenant eviction proceedings. The referee noted that the respondent could file initial complaints on behalf of natural persons in nonresidential tenant eviction actions and could fill in eviction forms where the landlord furnishes the required information in writing.

Approving the Stipulation for Settlement and the Referee's Report, the Supreme Court permanently enjoined the respondent from engaging in the unauthorized practice of law. See The Florida Bar v. Mickens, 465 So.2d 524 (1985).

On September 24, 1985, the Florida Bar filed a petition in the Supreme Court of Florida charging respondent with engaging in the unauthorized practice of law in contempt of the Supreme Court's order of March 7, 1985.

On October 31, 1985, an Order to Show Cause and Order Appointing Referee was issued directing respondent, William K. Mickens, Jr., to appear and present to the court such reasons and considerations as to why he should not be held in contempt for violating the Supreme Court's order. Pursuant to the Order to Show Cause, a hearing was held on August 16, 1986. After consideration of the evidence presented and arguments of counsel, the referee makes the following findings of fact, conclusions of law and recommendations:

FINDINGS OF FACT

1. Respondent, William K. Mickens, Jr., is not now nor has he ever been authorized to practice law in the State of Florida.

2. The respondent is the president of Evictors of Florida, Inc., and/or Rapid Diversified Services, Inc., doing business in Dade County, Florida, and in such capacity has prepared legal documents for a landlord in a residential tenant eviction proceeding in County Court in and for Dade County, Florida.

3. On or about June 2, 1985, Dr. Jose Suarez-Pupo contacted respondent and requested that respondent initiate eviction proceedings

against one Elia Rodriguez.

4. The property involved in the tenant removal case was residential.

5. On or about June 10, 1985, Dr. Pupo paid respondent \$170.00 by personal check in order to have respondent prepare those legal documents necessary in a tenant eviction proceeding.

6. The respondent prepared and served a three-day tenant notice (§83.56, F.S.) and filed a removal of residential tenant case in County Court in and for Dade County, Florida.

7. Dr. Pupo attempted numerous times to contact respondent at the office of Evictors of Florida, Inc., with regard to the status of the eviction proceedings but was unsuccessful.

8. On or about July 17, 1985, Dr. Pupo personally inquired in the office of the Clerk of the Courts as to the status of the eviction proceedings and discovered that the complaint had been filed by the respondent several weeks after respondent had cashed Dr. Pupo's check.

9. Dr. Pupo was forced by the inactivity of the respondent to complete the eviction process himself.

CONCLUSIONS OF LAW

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;
 - 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.
- 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. "Landlord" is defined as the owner or lessor of a dwelling unit, §83.43, Florida Statutes.

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 chapter 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 chapter, which states 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 addresses actions filed by the landlord, §83.59(2), Florida Statutes, may be construed as excluding non-attorney agents from filing on behalf of a residential landlord.

Further, 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. The Florida Bar v. Brumbaugh, 355 So.2d 1186 (1978); The Florida Bar v. Kaufmann, 452 So.2d 526 (1984); The Florida Bar v. Furman; 276 So.2d 378 (1979).

The enumerated activities of the respondent constitute the unauthorized practice of law in contempt of the Supreme Court's order of March 7, 1985.

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:

1. Pursuant to Article XVI of the Integration Rule, it is recommended that respondent, William K. Mickens, Jr., be found to have engaged in the unauthorized practice of law in

contempt of the Supreme Court's order of March 7, 1986.

2. That respondent be permanently restrained and enjoined from presenting himself as, or from using any accolation which expressly or impliedly suggests that he is, licensed to engage in the practice of law in the State of Florida.

3. 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:
- 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.

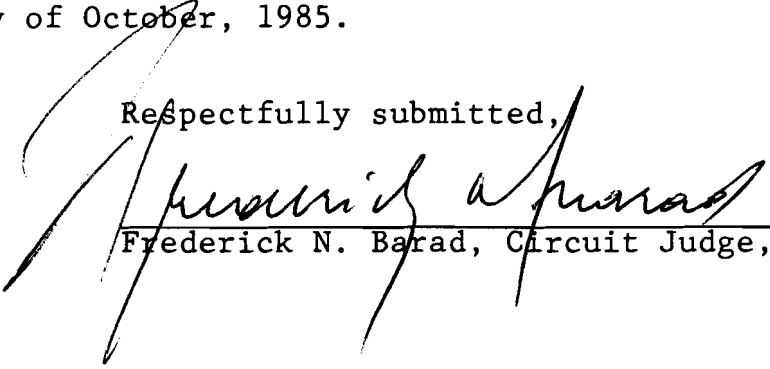
4. For the reasons that respondent has previously been found to have engaged in the unauthorized practice of law; that respondent offered no testimony in his defense in the instant proceeding; and further, that when given an opportunity to present a statement in mitigation of the sentence to be imposed, not only did respondent show no remorse but instead indicated that he would continue to engage in the unauthorized practice of law, it is recommended that respondent be incarcerated in the Dade County Jail for a period of 20 days.

5. That respondent be required to pay a fine in the amount of \$1,000.00.

6. That respondent be assessed the costs of this proceeding.

Dated this 17th day of October, 1985.

Respectfully submitted,


Frederick N. Barad, Circuit Judge, Referee

Copies furnished to:

Leonard F. Baer, Esq.
Charles Gould, Jr., Esq.
Mary Ellen Bateman, Florida Bar