IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR, Petitioner,	)	
v.	)	Case No. 68,450
JOHN H. LOWE, JR., Respondent.	)	

RESPONDENT'S REPLY BRIEF

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ARGUMENT

A. THE BAR FAILED TO PROVE THAT LOWE MISREPRESENTED TO THE INGRAMS THAT THE $7,500.00 THEY PAID HIM IN JANUARY, 1983, WOULD BE USED TO OFFSET COSTS.

In its answer brief, the Bar attempts to divert the Court's attention away from the central issue in this matter, i.e., the referee's erroneous construction of the facts and misapplication of the law. Thus, the Bar has rationalized the multitude of errors committed by the referee, as well as its own glaring evidentiary shortcomings, by focusing on perceived inconsistencies in Lowe's defense. For example, it would have the Court ignore, just as the referee erroneously did, Ingram's inability to distinguish between costs, fees and retainers, when such distinctions are the linchpin of its case against Lowe. Ans.B.pp.14-15. The Bar attempts to shift the blame for Ingram's confusion to Lowe, who allegedly took unfair advantage of him. The Bar's argument is circuitous. If Lowe explained to Ingram that the $7,500.00 was for accrued attorney's fees and Ingram did not understand that concept because of his inability to distinguish between fees and costs, Lowe cannot be blamed for creating such confusion.

In like manner, the Bar now claims that the origin of the word "trial" on the receipt Lowe gave Ingram for the $7,500.00 paid in January, 1983, is of little consequence in determining Lowe's culpability. Ans.B.p.15. As long as it appeared that

Lowe may have written the notation on the receipt, the Bar deemed it significant. Since it now appears that Ingram wrote the word on the receipt, the Bar has adopted a different view and claims that "Had nothing been written on the receipt, it would not alter the ruse by which respondent originally obtained the $7,500.00 from his trusting friend and client on January 19, 1983." Id. Once again the Bar has missed the point. The notation was written, and it was written not by Lowe, but by Ingram. As the referee correctly noted, although he failed to follow through on his observation, if Ingram wrote the word "trial" on the receipt, his credibility would have been seriously undermined, and with it the Bar's case against Lowe. In like manner, the Bar failed to address the testimony of Mr. Taylor, Mrs. Taylor and Ms. Dyer and the referee's glaring error with respect to the origin of the notation.[1] We suspect that the Bar's omission was intentional, for the only conclusion which may reasonably be reached in light of such evidence is that Ingram has been less than candid with

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[1] As we noted in our initial brief, the referee, without a trace of support from the record, suggests that the notation was made by the individual who filled out the receipt, i.e., Ms. McKee. Initial B.pp.14-15. No one, including the Bar, has made that claim.

the Bar and the referee in his obsessive attempt to recoup the money he paid Lowe for attorney's fees.[2]

B. LOWE DID NOT CHARGE INGRAM EXCESSIVE FEES.

1. The Sears Case

The referee determined that Lowe charged and collected a fee of $1,400.00 for representing Ingram in a case against Sears which settled before trial for $2,500.00. Amended Report, p.4. Lowe insists that he charged Ingram a fee of $1,000.00 and also recovered $500 he had paid out-of-pocket for costs in that matter. Although Lowe did not present a detailed listing of the costs he advanced on Ingram's behalf, he did prove that cost advances were made. Thus, Ingram admitted that Lowe had paid the costs incurred in the Sears case, including deposition charges, out of his own pocket. Tr.I.p.83. The Bar's auditor, Mr. Pizarro, stated that the disbursement of the settlement proceeds

[2] Ingram's veracity is further undermined by Ms. McKee's testimony, which was conveniently ignored by the referee. Although the Bar would find solace in the fact that some insignificant aspects of her testimony do not square with the record, e.g., her statement that Ingram finally paid Lowe the $7,500.00 in June, 1983, when such payment was made in January, 1983, she has steadfastly maintained that she told Ingram at least a dozen times before he paid that the money was for accrued attorney's fees. Neither McKee, nor Pat Hollman, whose testimony supports McKee's, have been shown to have any reason to fabricate such a story to assist Lowe. Their testimony, as well as the overwhelming physical evidence and other testimony presented at the hearing, makes plain that Ingram knew that the money he paid Lowe was for accrued attorney's fees and not for costs.

of the Sears case from Lowe's trust account indicated the payment of $1,000.00 to Lowe for fees and $500.00 for costs. The Bar had ample opportunity to refute Lowe's claim that $500.00 of the settlement proceeds was used to reimburse him for cost advances. Lowe was cross-examined in detail about other aspects of the Bar's case but was not asked any questions about the nature or the amount of the cost advances. Lowe should not be made to suffer for the Bar's failure of proof.

2. The Veterans Administration Proceeding

Lowe maintains that he devoted approximately 60 hours to researching matters associated with Ingram's Veterans Administration claim. Tr.II,pp.21-22. The Bar would have this Court believe that the referee wasn't bound to accept Lowe's testimony, especially since the absence of time records hindered the Bar in establishing the precise amount of hours Lowe devoted to Ingram's Veterans Administration claim. Yet, the absence of such records does not relieve the Bar of its burden of proving by clear and convincing evidence that Lowe charged an excessive fee. Thus, the Bar could have inquired of Lowe regarding the nature of the research performed, the sources consulted, the legal issues involved and the results achieved. The Bar could have presented expert testimony from an attorney who practices in that area of the law to show that Lowe did not devote, or should not have devoted, that much time to research and preparation. In short,

the Bar failed to impeach Lowe's testimony that he did the work and charged a reasonable fee for his efforts.

CONCLUSION

Based upon the foregoing, and the arguments presented in the respondent's initial brief, the Court is urged to reject the referee's findings of misconduct and his recommended penalty.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been forwarded by First Class United States Mail to Diane V. Kuenzel, Esquire, Assistant Staff Counsel, The Florida Bar, Tampa Airport, Marriott Hotel, Suite C-49, Tampa, FL 33607, on this 14th day of April, 1987.

Attorney