IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

LAURENCE A. CANTER,

Respondent.

_____/

CONFIDENTIAL

CASE NO. 68,957
(TFB #12A85H74)

THE FLORIDA BAR'S OPENING BRIEF

THOMAS E. DEBERG
Assistant Staff Counsel
The Florida Bar
Suite C-49
Tampa Airport
Marriott Hotel
Tampa, Florida 33607
(813) 875-9821

TABLE OF CONTENTS

TABLE OF AUTHORITIES

SUMMARY OF THE CASE

On December 19, 1986, final hearing was held before the Honorable R. Wallace Pack, Referee. Judge Pack found respondent guilty of violating Integration Rule 11.02(3)(A) (conduct contrary to honesty); DR 1-102(A)(4) (conduct involving dishonesty or misrepresentation); and DR 1-102(A)(3) (illegal conduct) (Report of Referee). The Florida Bar stated to the court that a public reprimand was the minimum possible penalty for dishonesty and misrepresentation involving bank loans (T 70, line 13-16), and that the Florida Bar did not see the instant case as clearly a public reprimand case (T 74, line 23). Respondent's counsel recommended a private reprimand (T 62, line 17-18).

Judge Pack, referee, recommended that respondent receive a public reprimand, and be suspended from the practice of law for two weeks. He further ordered that respondent be assessed his share of the costs of these proceedings. (Report of Referee, III).

The petitioner in this petition for review is the Florida Bar and the respondent is Laurence A. Canter. In this opening brief, each party will be referred to as they appeared before the referee. Record references in this opening brief are to portions of the trial transcript, exhibits, and pleadings as they appear in the record.

The Florida Bar petitions this court for review of the referee's recommendation of discipline.

STATEMENT OF THE FACTS

On July 29, 1983, respondent and his business partner Martha Siegel, signed a contract to purchase real estate from the Robert F. Bluck Corporation. (Exhibit "A") The contract specified a total purchase price of $200,000.00, to be paid as follows:

A. Deposit $20,000.00;

B. New mortgage $150,000.00;

C. Balance to close $30,000.00

(Exhibit "A")

On or about August 23, 1983, the estimated value of the subject property based on an appraisal done by MAR Appraiser was approximately $217,000.00 (TR 10).

On August 4, 1983, respondent and Siegel signed a personal financial statement on which they listed $20,000.00 as down payment on a building, to wit, said real estate (Exhibit "B"). However, respondent and Siegel did not make a $20,000.00 down payment on the real estate on or before August 4, 1983, nor did they do so on or before closing on the property, which occurred October 7, 1983. (Complainant's First Request for Admissions (FR) at 3a). The financial statement was submitted to Southeast Bank, N.A. as part of the loan application for the subject real estate (FR 3b).

Southeast Bank, N.A., lender, issued a mortgage loan report dated August 15, 1983 listing the equity of respondent and Siegel in said real estate as $50,000.00 and the source of equity as cash (Exhibit "C"). $50,000.00 equity in the real estate had not

been established on or before August 15, 1983 by payment of cash (FR 1c,3c).

On September 12, 1983, respondent and Siegel signed a loan commitment letter dated September 10, 1983 from Southeast Bank, N.A., providing that there would be no secondary mortgage financing on said real estate without the bank's expressed written consent (Exhibit "D"). After having submitted all the aforesaid documents to Southeast Bank, N.A. on October 7, 1983 respondent and Siegel signed a note for $150,000.00 from Southeast Bank, N.A. to purchase the real estate (Exhibit "E"). On that date, they also executed a mortgage and security agreement on the real estate, in which it was required that no secondary financing on the real estate would be obtained without the bank's expressed consent (Exhibit "F").

Before signing aforesaid mortgage and security note, respondent and Siegel had agreed with Robert F. Bluck to pay the down payment by secondary financing (FR 3d). In fact, on October 7, 1983, respondent and Siegel signed a mortgage agreement with Mr. Bluck for a mortgage of $50,000.00 (Exhibit "G"). Southeast Bank, N.A. was not informed of the mortgage agreement between respondent, Siegel and Bluck, nor was the mortgage recorded on or before October 7, 1983 (FR 3e). As consideration for the $50,000.00 mortgage agreement, respondent and Siegel executed a promissory note, dated October 7, 1983 for $50,000.00 (Exhibit "H").

On a balance sheet dated June 30, 1984 and submitted to Southeast Bank, N.A. in support of an application for a $45,000.00 loan to be secured by a second mortgage on the subject real estate, respondent and Siegel listed the mortgage payable to Southeast Bank, N.A. ($148,017.30) as a long term liability, but did not list the outstanding mortgage with Bluck (Exhibit "I").

In a sworn affidavit dated August 10, 1984, respondent and Siegel represented to the bank that they were aware of no facts by reason of which the title to, or possession of, the subject property or any part of it or any personal property on it might be disputed or questioned (Exhibit "J" at 5). Also in the affidavit they represented that the subject property was free of all liens and encumbrances except for the mortgage securing the promissory note in the original principle sum of $150,000.00, executed by respondent and Siegel on October 7, 1983 (Exhibit "J" at 3). On August 10, 1984, respondent and Siegel executed a second mortgage for $45,000.00 on said real estate with Southeast Bank, N.A. (Exhibit "K").

Loan officers at Southeast Bank, N.A., were at the time of the loans in question unaware of respondent and Siegel's mortgage with Robert Bluck, and of the promissory note given as security (TR 7). The loan officers believed at the time the loans were issued that respondent and Siegel had a $50,000.00 cash equity in the subject property (TR 8).

Respondent and Siegel were purchasing the property from Robert Bluck, a client of respondent's in regards to immigration matters (TR 13). The documents for the purchase of the subject real estate from Robert Bluck were drafted by respondent (TR 14).

Respondent has an LLM in Taxation from Georgetown University School of Law (T 7, line 24-25), and at or near the time of the loans in question advertised that he practiced real estate law (T 17, line 13-18).

Southeast Bank, N.A. was insured under the Federal Deposit Insurance Act at all times relevant to the negotiation of and execution of the loans and papers in question (TR 9).

Respondent has been very active in law-related activities and in his local community. He has been president of the Central Immigration Lawyers Association and has served on the association's Board of Governors, (T 10, line 4-6), which with The Florida Bar Association co-sponsored advanced level immigration seminars (T 13, line 1-4). He is a board member of The United Way and has worked for that organization in fund raising (T 13, line 14-15, line 21-23). He is a high profile individual both due to his law related and community activities and due to his having appeared on several occasions in news articles (T 18, line 1-7).

Respondent was admitted to The Florida Bar, February 21, 1980. He has no prior history of discipline.

SUMMARY OF ARGUMENT

A public reprimand, coupled with a two week suspension, is an insufficient discipline for illegal conduct committed while obtaining two loans from an FDIC Bank, especially given the submission of a false affidavit.

In this petition for review the Florida Bar asks that the referee's recommendation of a public reprimand and two week suspension, plus payment of costs, be disapproved and that respondent be suspended for 91 days and be required to prove rehabilitation before being readmitted to the Bar.

ARGUMENT

A public reprimand, coupled with a two week suspension, is an insufficient discipline for illegal conduct committed while obtaining two loans from an FDIC bank, especially given the submission of a false affidavit.

After a hearing on the matter before him, the Honorable R. Wallace Pack, Referee, found the following: On October 7, 1983, respondent and Martha S. Siegel, his law partner, executed a mortgage and security agreement on property they were purchasing for use as their law office. The agreement required that no secondary financing on that real estate would be obtained without the express consent of the lender, Southeast Bank, N.A., an FDIC bank.

On or before October 7, 1983, respondent and Siegel had agreed with Robert F. Bluck, the seller, to secondary financing in lieu of a cash downpayment. On October 7, they signed a mortgage agreement with Mr. Bluck for $50,000.00 on the subject real estate, and as consideration for the mortgage, executed a promissory note for $50,000.00. Southeast Bank, N.A., was not informed of the mortgage agreement between respondent, Siegel and Bluck, nor was the mortgage ever recorded.

The contract to purchase from Robert F. Bluck specified a deposit of $20,000.00, new mortgage of $150,000.00, and a balance of $30,000.00 to close. On a personal financial statement, dated August 4, 1983 and submitted in support of the application for the $150,000.00 loan, respondent and Siegel misrepresented that they had made a $20,000.00 downpayment on the subject property. Based on representations made by respondent and Siegel

to Southeast Bank, N.A., the bank's mortgage loan report listed the equity of Siegel and Canter in the real estate as $50,000.00 and the source of equity as cash.

On June 30, 1984, respondent and Siegel submitted additional documents to Southeast Bank in support of an application for a $45,000.00 loan to be secured by a second mortgage on the subject real estate. On a balance sheet dated June 30, 1984, respondent and Siegel listed the mortgage to Southeast Bank, N.A. as a liability, but did not disclose the mortgage to Bluck.

On a personal financial statement dated July 1, 1984, respondent and Siegel listed the mortgage balance on the first mortgage with the bank, but did not disclose the unrecorded mortgage with Bluck. Loan officers at the bank again believed respondent and Siegel to have a $50,000.00 cash equity in the property, and were unaware of the debt to Robert F. Bluck.

On August 10, 1984, respondent and Siegel submitted a sworn affidavit to the bank, representing that they were aware of no facts by reason of which the title to, or possession of, the subject property or any part of it or any personal property on it might be disputed or questioned.

At the time of both loans in question, Southeast Bank, N.A. was insured under the Federal Deposit Insurance Act.

The Referee found the fraud committed by Respondent to be deliberate and intentional. The Referee recommended respondent be found guilty of violating Integration Rule, article XI, Rule 11.02(3)(A) (conduct contrary to honesty); DR 1-102(A)(4)

(conduct involving dishonesty or misrepresentation); DR 1-102(A)(3) (illegal conduct).

In The Florida Bar v. Barrow, 412 So.2d 862 (Fla.1982), the respondent had pled guilty to a misdemeanor of making a statement he knew to be false on a loan application. He claimed that he did not knowingly provide any false data. The court approved a consent judgment for a public reprimand plus payment of costs.

In the instant case, unlike in Barrow, the respondent has not pled guilty nor been found guilty of any criminal violations. Nevertheless, the conduct in which he engaged was the basis for the finding by the referee of a violation of DR 1-102(A)(3) (illegal conduct). His illegal actions centered around two separate loans from an FDIC bank, and included the submission of a false affidavit in support of his loan application. As noted by the Referee, the fraud was deliberate and intentional.

Further, respondent has an LLM in taxation, has advertised real estate as an area in which he practiced, and certainly cannot reasonably claim that he did not know that he had submitted false information in support of his applications for loans. A public reprimand is not a sufficient penalty in the instant case, nor does it become so by coupling it with a two week suspension.

In The Florida Bar v. Beneke, 464 So.2d 548 (Fla.1985), the respondent failed to inform the mortgagee that the purchase price of the property which would be subject to a mortgage had been reduced, with the result that the bank issued a mortgage exceeding the actual negotiated purchase price of the property. The respondent was publicly reprimanded. In Beneke, the respondent argued that the lender indicated it would have issued a mortgage loan equal to 70% of the appraised value of the property, which was $227,000.00. Nevertheless, the mortgage which was issued, $160,000.00, was for $1,000.00 more than the actual final negotiated purchase price of the property. The referee found Beneke guilty of violating DR 1-102(A)(4) (misrepresentation) and Florida Bar Integration Rule, article XI, Rule 11.02(3)(a) (committing an act contrary to honesty and good morals).

In the instant case, unlike in Beneke, the respondent was found guilty of violating DR 1-102(A)(3) (illegal conduct). In addition, in Beneke only one loan was involved, and the conduct was failure to correct information which was accurate when first presented to the bank. In the instant case, misrepresentations were made in two loan applications for two loans which were made one year apart. The misconduct included a false affidavit, false financial statements, and numerous false representations. The fraud was deliberate and intentional. A much more severe penalty is warranted in the instant case than that given in Beneke.

Respondent, by and through his attorney, argued that his conduct constituted just an omission to list the down payment as a loan from the seller rather than as a cash down payment (T 57, line 21-24). In so arguing, respondent sought to differentiate between his conduct and that in Beneke. Contrary to respondent's argument, however, the instant case involves much more than a simple omission. By false and misleading financial statements and balance sheets, respondent created a false and misleading picture of his financial status. Failure to disclose secondary financing occurred even while assurances were given in an affidavit that respondent was aware of no basis for a potential claim on the property, and although respondent's mortgage and security agreement required no secondary financing without the bank's expressed consent.

Respondent further argued that his conduct constituted a isolated event (T 58, line 23). This clearly was not the case, since it involved two separate loans obtained one year apart, and numerous separately-prepared and signed statements and documents.

It was further argued that the court should consider the respondent's age and experience, seeing the misconduct as an error and misjudgment (T 58, line 13-18). It should be noted, in considering age and experience, that the respondent had an LLM in taxation (T 7, line 24-25), advertised that he practiced real estate (T 17, line 13-18) and had been in practice over four years when the misconduct occurred (T 7, line 22- T 8, line 3).

Respondent's counsel suggests that because respondent is a high profile individual, a public reprimand would be more harmful to him than to most, and more deleterious than to lawyers who are not as well known (T 62, line 3-14). To the contrary, if respondent is as well thought of in the community as his witnesses suggest, he would be better able to weather public statements regarding his misconduct than would those who do not have a good community reputation to help ameliorate the effects of public censure.

Respondent has been very active in community affairs, was the president of the Central Immigration Lawyers Association and has served on the associations Board of Governors (T 10, line 4-6), which co-sponsored with the Bar Association advanced level immigration seminars (T 13, line 1-4). He is a Board member of the United Way (T 13, line 14-15), and has worked on fund raising brochures for the United Way (T 13, line 21-23). He is a high profile individual in the community, and on several occasions his name has appeared in news articles (T 18, line 1-7). Due to the extensive community involvement, arguable a long term suspension is not warranted. Respondent certainly should be given credit for his contributions to the practice of law and to his community, and therefore should be given a ninety-one (91) day suspension rather than being suspended for a more extended period.

A public reprimand coupled with a two week suspension is insufficient under the facts of this case.

Wherefore, The Florida Bar asks that this court disapprove the referee's recommended discipline, and in lieu thereof order that respondent be suspended from the practice of law for 91 days and thereafter until proof of rehabilitation, and that he pay costs of this action.

CONCLUSION

On two occasions, one year apart, Respondent deliberately and intentionally engaged in a series of misrepresentations in securing loans from an FDIC bank. His actions were fraudulent and illegal. A public reprimand and two week suspension is an insufficient discipline under the facts of this case.

WHEREFORE, The Florida Bar respectfully requests that this Honorable Court disapprove the referee's recommendation, and in lieu thereof suspend Respondent Laurence A. Canter from the practice of law for ninety-one (91) days and thereafter until he has proven rehabilitation, and that he pay the costs of this action.

Respectfully submitted,

Thomas E DeBerg
THOMAS E DEBERG
Assistant Staff Counsel
The Florida Bar
Suite C-49
Tampa Airport, Marriott Hotel
Tampa, Florida 33607
(813) 875-9821