

IN THE SUPREME COURT OF FLORIDA

FILED

SID J. WHITE

MAR 23 1987

THE FLORIDA BAR,

Complainant,

vs.

STEVEN S. FRIEDMAN,

Respondent.

CONFIDENTIAL CLERK, SUPREME COURT

By

Case No. 69,199 Deputy Clerk

TFB. No. 02-86124

INITIAL BRIEF OF COMPLAINANT

JAMES N. WATSON, JR.
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OTHER AUTHORITIES CITED

article XI, Rule 11.02(6)	1
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STATEMENT OF THE CASE

The underlying disciplinary action was brought pursuant to the provisions of article XI, Rule 11.02(6) and Rule 11.07(4), Integration Rule of The Florida Bar.

On April 30, 1986, The Florida Bar received information from the Office of Attorney Ethics of the New Jersey Supreme Court showing that Respondent had been convicted of certain state crimes in the Superior Court of New Jersey and had been suspended from the practice of law in New Jersey.

On July 31, 1986, The Florida Bar filed a Notice of Felony Conviction with this Court based upon the criminal convictions of Respondent under Supreme Court case number 69,114. On August 13, 1986, Respondent was suspended pursuant to article XI, Rule 11.07(3). Respondent failed to petition the Court for modification or termination.

On July 31, 1986, The Florida Bar also filed a formal disciplinary complaint based upon the criminal convictions and the suspension from practicing law. Along with the complaint, The Florida Bar served upon Respondent a request for admissions. Respondent failed to file an answer either to the complaint or the request for admissions.

On September 9, 1986, The Florida Bar filed with the appointed Referee a motion to deem matters admitted and a motion for summary judgment based upon the pleadings and the lack of a response from the Respondent.

A final hearing was set for October 9, 1986 at which time both parties submitted written arguments to the referee as to proper discipline based upon the facts admitted from the complaint.

On November 18, 1986, the referee entered his report in which he found Respondent guilty of violating the cited disciplinary rules and provisions of the Integration Rule. Based upon his findings, the referee recommended Respondent be suspended for a period of two years and be required to pass the Ethics portion of The Florida Bar Exam as a condition to future reinstatement.

On January 23, 1987, The Florida Bar notified the Court that The Florida Bar would not seek review of the referee's report. Respondent did not file a petition for review within the period permitted by the Integration Rule. On February 25, 1987, the Court entered its order pursuant to Rule 3-7.6(c)(6) directing the parties hereto to submit briefs as to the suitability of the disciplinary measure recommended by the referee.

STATEMENT OF THE FACTS

In 1984, Respondent was charged in an indictment returned by Passaic County Grand Jury, New Jersey, in 18 counts, with seven counts of conspiracy to commit theft by deception, one count of forgery, five counts of uttering a forged instrument, and five counts of falsifying records.

On November 15, 1985, in accordance with a plea bargain agreement, Respondent pled guilty to three counts of falsifying records, in violation of N.J.S.A. 2C:21-4(a). Under the agreement, the state dismissed the remaining counts and Respondent received a probationary sentence of two years, was ordered to pay a fine of \$7,500, and ordered to perform 200 hours of community service.

As to the underlying facts surrounding the matter, it appears that over the years, Respondent, who was primarily a personal injury lawyer, represented a number of Yugoslavian nationals, some of whom spoke little or no English. He met many of these people through co-defendant Sulejmani, who owned numerous apartments in the Paterson area and rented them to fellow Yugoslavians. Sulejmani often served as interpreter and spokesman for Respondent's Yugoslavian clients.

According to Respondent, in October 1980, he asked Sulejmani to contact a client, Mazar Dauti, in order to obtain Dauti's signature on an affidavit stating that Dauti did not own an

automobile and was therefore entitled to no-fault benefits from the operator of the vehicle which had injured Dauti in an accident. Sulejmani returned the unnotarized affidavit bearing Dauti's signature to Respondent who improperly notarized the document, thereby concealing from the insurance company the fact that Dauti had not signed the affidavit in Respondent's presence. Similar scenarios accompanied affidavits bearing the names of Husni Merovic in April 1981, and Shebrit Doko in January 1983.

On January 18, 1986, the Supreme Court of New Jersey entered an order temporarily suspending Respondent from practicing law in New Jersey. This order of suspension was based on Respondent's having pled guilty to three counts of falsifying records. The suspension order was to be effective until final resolution of the New Jersey ethics complaint and further order of the court. At the time of the final hearing, no showing was made by Respondent that this temporary suspension had been terminated or modified in any manner.

SUMMARY OF ARGUMENT

The referee herein recommended a two-year suspension based upon the admitted facts showing Respondent had been convicted of criminal misconduct in New Jersey that was consistent with felony violations under Florida law.

The criminal charges were based upon Respondent's having falsely notarized certain insurance claim affidavits.

A two-year suspension as recommended by the referee is consistent with case holdings wherein such fraudulent or misrepresentative conduct was criminal in nature. The discipline can be seen to be supported by the stance taken to prosecute such conduct criminally.

ARGUMENT

THE DISCIPLINE RECOMMENDED BY THE
REFEREE IS SUITABLE AND APPROPRIATE.

The impetus for the disciplinary action by The Florida Bar against Respondent was the criminal conviction he received in New Jersey for the charge of falsifying records. The criminal charges were comparable to felony crimes under Florida statutory guidelines and definitions. This Court concurred in this characterization of criminal misconduct by the issuance of a suspension order based upon The Florida Bar's notice and petition.

In Supreme Court case number 69,114, Respondent was suspended under the provisions of article XI, Rule 11.07(3) wherein it is provided that such suspension shall remain in effect for a period of three years unless otherwise modified. The three-year period within this particular suspension case would expire September 12, 1989.

Under the rules of this Court as set forth in The Florida Bar v. Heller, 473 So.2d 1250 (Fla. 1985), a conviction in a court of competent jurisdiction is deemed conclusive proof of the underlying facts and the commission of the crime.

In the instant matter, The Bar submitted written argument to the referee in support of discipline and therein recommended a three-year term of suspension. Respondent submitted a copy of his

argument to the New Jersey Disciplinary Review Board wherein it was requested that any discipline be limited.

In finding that Respondent should be discipline based upon the conduct which was the subject of the New Jersey indictment, the New Jersey Disciplinary Review Board cited that Respondent was guilty of conduct involving "dishonesty, fraud, deceit or misrepresentation" and conduct that "adversely reflects on his fitness to practice law."

The facts herein prove that on three occasions, Respondent falsified notarized insurance affidavits by attesting to client signatures he had not witnessed being signed. These insurance affidavits were for the purpose of securing insurance coverage on individuals not covered through their own automobile coverage.

In its argument to the referee, The Florida Bar cited several cases that dealt with fraudulent or misrepresentative conduct. In The Florida Bar v. Meldon, 459 So.2d 314 (Fla. 1984), the respondent received an indefinite suspension for conspiracy to defraud the Internal Revenue Service. In The Florida Bar v. Kennedy, 439 So.2d 215 (Fla. 1983), the respondent was suspended for three years as the result of a conviction for devising a scheme to obtain money by false and fraudulent pretenses. In The Florida Bar v. Johnson, 439 So.2d 216 (Fla. 1983), the respondent was suspended for three years for forging his wife's signature to promissory notes.

In the matter of The Florida Bar v. Lancaster, 448 So.2d 1019 (Fla. 1984), the Court held that the respondent's "complete lack of candor" about his unwitting involvement in a suspicious activity raises questions about his fitness to practice law. In view of the mitigation of no prior disciplinary record, the Court entered a two-year suspension.

The New Jersey cases cited within Respondent's submission to the referee provided for periods of suspension of up to eighteen months on the upper end of discipline to the administering of a public reprimand on the lower end of discipline.

In the recent Florida case of The Florida Bar v. Bell, 493 So.2d 457 (Fla. 1986), the respondent received a public reprimand for falsely acknowledging and witnessing a deed as notary public.

While a cursory comparison of the actual conduct of the respondent in Bell and the instant Respondent would seem to draw a parallel of conduct the important point of conflict is that herein Mr. Friedman's conduct was considered criminal in nature and was fully pursued by the prosecuting authorities.

By approving the referee's recommended discipline, the overall effect achieved was to have achieved a suspension close to the actual recommendation of three years.

In Bell, the respondent's conduct can be viewed as accommodating the desires of his client without misleading or causing harm to a third party directly involved.


In the instant matter, Respondent's misconduct was an integral part in an attempt to secure monetary benefits from a third party, not his client. In notarizing and submitting a falsely attested signature, Respondent created a document upon which reliance was attached to his signature. His representations were false and such was done in such a manner that he knew they were false and would be relieved upon by the insurance companies.

The final effect of the recommended discipline would appear to be in line with case authority of both jurisdictions and in keeping with the Court's stated objectives of discipline in State ex rel. Florida Bar v. Murrell, 74 So.2d 221 (Fla. 1954). In Murrell, the Court held that the administering of discipline must be just to the public, fair to the attorney and designed to deter others from similar conduct. The Florida Bar feels that the final effect of the two-year suspension recommended by the referee will accomplish all the objectives of Murrell.

CONCLUSION

The Florida Bar feels that the recommended discipline of the referee for a two-year suspension is suitable under the circumstances of this case.

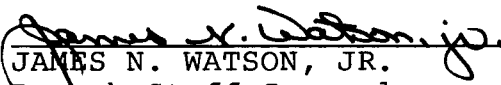
Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Complaint has been mailed by certified mail # P675 195 484, return receipt requested, to STEVEN S. FRIEDMAN, Respondent, at his Bar record address of 305 Valley View Drive North, Franklin Lakes, New Jersey 07417, this 23rd day of March, 1987.



JAMES N. WATSON, JR.
Branch Staff Counsel