

046

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Supreme Court Case No. 71,698

vs.

CHARLES W. STONE,

Respondent

FILED ✓

SEP 26 1988

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TALLAHASSEE, FLORIDA

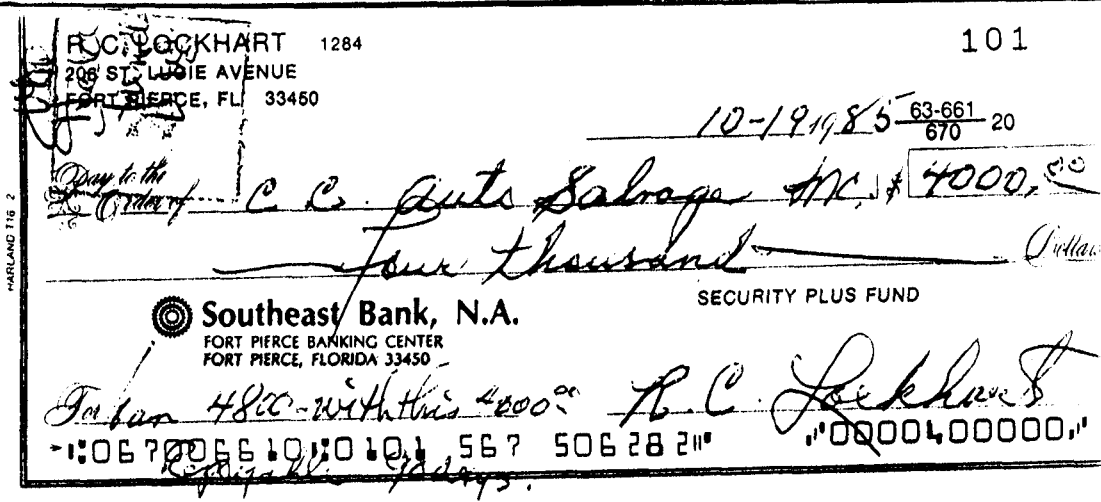
RESPONDENT'S REPLY BRIEF

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RESPONDENT'S REPLY

CHARLES WM. STONE for reply to the brief filed by the Florida Bar on or about September 19, 1988, says that it agrees with many of the issues raised in that brief.

Respondent agrees with complainant that the charge of usury is the most serious charge. That is why the evidence of that charge had to be "clear and convincing". This was not the case. There was no usury. Let's look at the check itself:



The Court's attention is called to Bar Exhibit 16 which is a check made payable to C C Auto Salvage Inc. in the amount of \$4,000.00 and that check says, unlike the Bar states in its case, that "\$4,000.00 is payable in ninety days". It never stated nor can anyone infer from the writing on that check anything other than what the Exhibit says. It says "\$4,800.00 with \$4,000.00 repayable 90 days". The \$4,000.00 to be repaid is the amount of the check itself. There is no showing of any interest that is usurious. Certainly, if that is the position of the Bar, that Charles Wm. Stone by writing on the face of the check that the total amount owed was \$4,800.00 with \$4,000.00 being paid in ninety days, was not guilty of a crime of any type. We refer to the transcript at page 18 which says:

Q: What does the writing say in the lower left corner?

A: If I can read it?

Q: It's in evidence.

A: It says 4800 with the \$4,000 payable in 90 days.

MR. McGUNEGLE: Let me show that to the Referee. The copy that we have put into evidence is not real clear at the bottom.

MR. McDONALD: To further help the Court, we will stipulate that that writing was on the check before it was negotiated and was, in fact, written by Charles William Stone.

THE COURT: You say it was written by him?

MR. McDONALD: And it was on the check before it was deposited.

THE COURT: Okay. (Tr. 18)

Then the Florida Bar goes on to assume, in spite of objection, that Mr. Lockhart, who issued the check, was an innocent bystander, and Mr. Stone, who received no compensation other than a few junk parts, was the real culprit. The part of the testimony referring to this, and the Referee's error in admitting such evidence, is found at the transcript at page 19:

A: It is my understanding that Mr. Stone represents and handles all of Mr. Lockhart's affairs and has control over -- this is what Mr. Lockhart has told me and I believe Mr. Stone has verified that.

MR. McDONALD: Your Honor, I just move for the record to strike that as hearsay and inadmissible.

THE COURT: Well, hearsay is admissible but he is not even quoting hearsay, he is quoting understandings.

THE WITNESS: Mr. Lockhart told me that Charlie Stone had control of his financial affairs. (Tr. 19)

Then it becomes clear that Mr. Chick could find no attorney in either St. Lucie County or Indian River County or in Martin County (the entire Nineteenth Judicial Circuit with the exception of Okeechobee County) who even thought he had a claim against Mr. Stone. See Transcript 26.

A: Yes.

After I lost the suit then I proceeded to try to find an attorney in St. Lucie County, Indian River County and Martin County and every attorney agreed I had a suit but they would not go against Mr. Stone because they were in the Rotary with him and associated with him on a daily basis. (Tr. 26)

Not one of the attorneys mentioned found Mr. Stone was guilty of criminal usury. Neither did Frank Lynch, the former Assistant State Attorney who investigated the original grievance claim, nor did Mr. Chick's own attorney. Only the Referee found such overwhelming evidence. We submit the evidence is not in the record.

Another fundamental error in this case occurred when the respondent's attorney was prohibited from going into the fact that Mr. Chick tried to kill attorney Charles Wm. Stone. The Court precluded any cross examination on that topic and the emphasis is supplied to the statement which appears in the transcript at page 28:

MR. MCGUNEGLE: I think what we are really getting into is the question that they're going to get to on Cross as to credibility. They took a deposition of this Donald Cates up in Tennessee about a week or ten days ago in which Mr. Cates makes an allegation that the Complainant asked him if he knew of a hit man to get Mr. Stone and, further, that he overheard a conversation in which Mr. Stone -- or Mr. Chick told Mr. Stone at the house one evening that if he would just roll over on the suit for \$100,000 that he would kick back \$25,000.

THE COURT: Okay, well, I have now heard that, for what it's worth, for whatever effect, if any, it would have on credibility. And we won't want to hear about that on Cross-Examination. (Tr. 28 emphasis supplied)

There is nothing in the transcript to show how, when or in what way any monies were repaid, much less the \$4,000.00 called for by the notation placed by Mr. Stone on the check. Once again, the notation on the check does not say that \$4,800.00 is repayable in ninety days, but that \$4,000.00 is repayable in ninety days. We repeat: The notation placed by Mr. Stone does not say \$4,800.00 is payable in ninety days but that \$4,000.00 is payable in ninety days, which is the amount of the check. The testimony is far from clear and convincing of any interest being charged. At page 39 of the transcript, this point was covered, once again, and once again, the Bar and the Referee do not understand the evidence which is clear and hopefully the Court will look at the Exhibit itself which is the basis of the charge against Mr. Stone -- that testimony is:

Q: You did ultimately -- first of all: On this check where does it state what the interest is, how is the interest stated?

A: It says for loan \$4,800 with \$4,000 repayable -- the check is for \$4,000, the repayment is 4800 with this -- this 4,000 repayable in 90 days.

Q: Do you know what other monies were owed to Mr. Lockhart before he wrote that \$4,000 check?

A: I have -- I didn't get involved with that. Mr. Stone paid everything to do for C C Salvage, covering C C Salvage. They were in arrears close to \$30,000, I believe.

Q: Was this the check that you negotiated right here?

A: I negotiated with Mr. Stone for a \$4,000 loan.

THE COURT: I think he means that you took and put in the bank or cashed or whatever you do with it.

THE WITNESS: Yes, sir. Yes.

BY MR. McDONALD:

Q: I ask you to remove the check and look at the back of it.

A: (The Witness complies.)

Q: Is that your signature?

A: No, it is not.

Q: Who signed the check?

A: Harmon Chadwick.

BY MR. McDONALD: No further questions.

Did you want to put that into evidence or do you want us to? You asked me to bring it. Is it in evidence?

THE COURT: There's a copy of it -- obviously, it wouldn't be in evidence since you have it. But --

MR. McDONALD: I didn't know if we had early on put this in.

THE COURT: A copy; I don't know if it was both sides or just the front.

MR. McGUNEGLE: It's both sides.

THE COURT: All right. We will let it just go with the copy.

MR. McGUNEGLE: Mr. Chick --

MR. McDONALD: I'm not done.

MR. MCGUNEGLE: I thought you were.

MR. McDONALD: No. I bet everybody wished I was but I'm not.

BY MR. McDONALD:

Q: You don't know what other monies were paid to Mr. Lockhart by C C Salvage, Inc., or what other obligations C C Salvage, Inc., owed to Mr. Lockhart prior to writing this check on 10-19-85; is that correct?

A: C C Salvage wouldn't have had no reason while I owned it to pay Mr. Lockhart anything.

Q: And what did C C Salvage, Inc. pay Mr. Lockhart while you owned it?

A: I wrote a check not to Mr. Lockhart but to Mr. Stone, I believe; I'm not positive; I don't want to hand this whole case on, you know, one error, but I don't know that C C Salvage had to pay Mr. Lockhart anything.

Q: You said earlier in your testimony that when you got the \$4,000 check you thought that you might have to pay a thousand; did I hear you correctly?

A: I -- I'm just going by the discussion, yes.

Q: So, Mr. Lockhart, can you describe Mr. Lockhart to the Court?

A: Mr. Lockhart is one -- he elderly gentleman, one of the nicest people you would want to meet. He has been a personal friend of Charlie Stone's for some time and they travel together all the time; they visit -- they're always together; he's just a personal friend but he's a fairly wealthy personal friend.

Q: At that time Mr. Lockhart wrote the \$4,000 check to C C Salvage Auto Salvage, Inc., you thought that \$4,000 would have to be paid back; is that correct?

A: Mr. Stone told me, roughly, that's, what, a 4,000 -- he did not tell me it was coming from Mr. Lockhart; I didn't meet Mr. Lockhart until several months after we received that check; I never met Mr. Lockhart. I'm going by memory now, that he told me it would cost me -- the statement was, "When you borrow four, you pay back five."

Q: But, so, then you intended not to pay back 1,000 but 5,000.

A: If that's what I had -- I left the rest up to Charlie. If that's what I had to do; I needed \$4,000, if that's what I paid with it, I had to go along with it, yes.

Q: But even though the check says 4800 with this 4,000?

A: If necessary I would -- if it had come back that I owed 5,000 I would have paid 5,000.

Q: And what did you pay Mr. Lockhart?

A: (No response.) (Tr. 39-43)

Once again, the Referee sought to impose criminal charges against Charles Wm. Stone, with writing on a check that \$4,000.00 was payable in ninety days (the face amount of the check) without any real evidence of anything else even though the complaining witness had undertaken no such action:

Q: Your complaint and the complaint we're here on charges usury in violation of Chapter 687 Florida Statutes. Particularly, it charges felon usury if the loan beared interest in excess of 45 percent, and particularly it charges that Charles Wm. Stone negotiated a felon usurious loan with Mr. Lockhart; my question is what legal action, if any, have you taken against Mr. Lockhart for this alleged usurious loan?

A: At this point, none.

Q: And this check was written 10-19-85. Is there any civil or ciminal action you intend to take against Mr. Lockhart for this check?

A: I would have to consult with my attorney before I made any statement on that.

MR. McDONALD: I have no further questions. (Tr. 44)

In dealing with Mr. Lockhart, who was not at the hearing, Mr. Lockhart who the Referee found was free from any fault whatsoever, testified as follows:

Q: Which is Exhibit 16.
What did Mr. Lockhart tell you regarding that check?

A: Mr. Lockhart told me that Mr. Stone had mentioned to him that he had a client who needed a loan and as his lawyer, he could not loan it to him and would he be willing to loan this man some money. And Mr. Lockhart says, "My reply was, 'Charlie, will it help you if I do,' and Charlie said, 'Yes,'" and he said, "I will be willing to cooperate any way that I can."

Q: Okay. Did he know what the purpose of the loan was?

A: He did not.

Q: Did he have anything to say regarding the manner in which it wsa paid back or would be paid back, excuse me?

I asked him what the notation on the front of it meant to him. He said, "I don't really understand that; Charlie makes the collections back and he says -- sometimes he says he tries to get me a finder's fee and sometimes he doesn't. And I don't know whether the money was paid back or not; leave that up to Mr. Stone."

Q: So, it would be paid back through Mr. Stone?

A: Yes.

Q: Did you have a subsequent conversation with Mr. Lockhart prior to this final hearing?

A: I did.

Q: Did he have anything to say regarding the notation at that conversation?

A: At that time he said it was his understanding that there may have been included in that check some payment for a motor or automotive part that was to be somehow accounted for in this check. (Tr. 73-74)

In addition, the Florida Bar's own investigator, when asked what evidence of any interest being paid to anyone, which is far from the amount of interest alleged to have been received by the Florida Bar, said:

Q: Do you have any evidence to prove that anyone paid interest in excess of 18 percent to Mr. Lockhart?

A: I do not. (Tr. 75)

We submit that Mr. Stone's explanation is clear that by writing the \$4,000.00 to be paid, and his discussion of the intent, is contrary to the claim by the Florida Bar that it has "proved a case" against this 72 year old attorney. Mr. Stone's testimony, although the Referee would not apparently listen to it since he did not like "good old boys" is clearly before this Court:

Q: Let's talk about usurious transactions. Did you -- I guess the usurious transaction we have to talk about is the one that's a felony, the one that would require taking over 45 percent interest willfully with intent. Did you ever go out and engage in securing felonious usurious loans for Mr. Lockhart?

A: No, sir.

Q: Anybody else?

A: No, sir.

Q: Tell the Court what the 48 -- \$4800 notation that you put on the

check means and what the money is and explain that as simple -- short as possible.

A: Harmon had indicated that Chick owed him some monies, that the company owed him some monies; I don't know whether it's Chick or the company. I think it was the company.

And that a part of that money -- I understood then to be \$500; he says later that it's \$400, but it doesn't make a particle of difference -- that he was to be paid some of it. And I had not anticipated actually being paid anything out of it and wasn't paid anything out of it and later on I think Mr. Larson asked me if that was a finder's fee and that sounded like a good word but it got coined a loan but I did not receive any monies from this in any manner whatsoever.

Q: Well, you did do some legal work; you didn't charge for that, either?

A: Well, they're Kentucky boys, we're all from Kentucky and we're all car bugs and they -- well, they -- I guess you do things with people.

THE COURT: Mr. Stone, I used to do tax returns before I went to law school and we used to have people who would come in; when I would ask them specific questions about their income or their expenses they would just say, "I'm an old country boy trying to make a living;" I learned that I'm an old country boy trying to make a living means I'm going to screw Uncle Sam out of everything I can.

So, Don't make -- don't give old country boy to me, you're not making any points at all.

THE WITNESS: I'm not. That's not my intention.

BY MR. McDONALD:

Q: Okay, but did you charge anything for the legal work?

A: Well, they eventually paid my expenses in that and they -- I got parts from them along and it's -- they sent me lots of business. They sent me divorces you wouldn't believe and I did do -- I did make money from the association but not from the Chadwicks nor Chick.

Q: Now, what kind of practice do you have? Did you learn anything out of this; what do you do in your law practice?

A: Yesterday or today?

Q: Today --

A: From today my practice will be different. I'm going -- stick to uncontested divorces and estates; I'm not -- I'm not going to buck the thing on this way -- way the practice is going now.

Q: And if there's anything comes up in your practice that you don't know how to do, what do you do with that kind of case?

A: Send it across the street or down to one -- I got an office on each

corner there; I got lots of beaucoup places to send it.

Q: Now, Mr. Stone, I --

A: I have been doing that for sometime now already.

Q: And what's your birth date?

A: June the 21st, 1916; it's somewhere in the record, I'm -- '15?

Q: Now, I don't want to spend a lot of time on it, it's going to have some relevancy on closing argument but what's that around your neck and do you wear it every day, just about, not for this hearing; what's that around your neck?

A: This is cartridges off of the bullets with which I was shot when I was robbed coming out of the back of the church.

Q: And what was the date of that shooting and robbery?

A: March the 9th, 1983, I believe.

Q: '83. And you were in critical condition --

A: Yes.

Q: -- and survived.

MR. McDONALD: No further questions. (Tr. 96-99)

On cross examination, that point was further brought forth by Mr. Stone:

BY MR. MCGUNEGLE:

Q: You said that the \$800 notation reflected everything but interest and that Harmon was owed some monies by Chick?

A: That's what I was told; I didn't handle -- but that's what I was told. (Tr. 100)

And further, a discussion of interest appears at Page 101 of the transcript by the Bar's examination of Mr. Stone:

Q: What was the interest?

A: There was not any discussion of interest. If he had paid this loan back when he cruised, if I understand their conversation, there would have been no interest at all. That may seem farfetched to you, but people do a lot of things when their (sic) friends and in a hurry and doing things. We set up papers with some interest notation in the event he went out of business or somebody else took over, just sort of like you would do for your son or something; you might let him have a no interest but if he sold the house subject to your mortgage you wouldn't want somebody else to do that which was in there, we even -- yeah, that -- I think that answers your question as near as I can.

MR. MCGUNEGLE: That's all the questions I have on redirect, Your Honor. (Tr. 101)

Mr. Herman Chadwick testified that he already owed \$400 or \$500 to Mr. Lockhart. There is no discussion of how long that money is owed or what interest was owable under it, and it seems useless to repeat that testimony. It suffices to say there is no clear and convincing evidence that usury was involved, that Mr. Stone was involved in usury, did anything criminal, and for that reason, the Referee's recommendation is not entitled to great weight as it is not predicated on substantial evidence in this record much less clear and convincing evidence.

By having the hearing in Orange County, Florida, it was impossible for Mr. Stone to put on the numerous people in the community who could testify to his good work in his church and community. Letters were submitted and hopefully the Referee sent those numerous letters on to the Court. See letters of Christian D. Searcy, Attorney; David V. Calvert, Ph.D.; Marjorie G. Harrington, LCSW; Philip J. Yacucci, Jr., Esq., Attorney; Robert A. Morgan; Franklin L. Dawson; David L. Rowe, M.D.; Willie L. Johnson; R. N. Skinner, P.E.; Clement L. Butler; H. Hershel Adams, Pastor; Walter S. Miller; Sharon E. Stephens; Joyce E. Oubari, R.N.; Diamond R. Horne, Esq., Attorney; W. Dudley Skaggs; John H. Stamm, Jr.; Lawrence Cleghorn; Roger L. Harrington, Pastor; Nevi Townsend, Pastor. It is submitted that the record of this cause does not justify a six month suspension and a less severe penalty should be forthcoming.

CONCLUSION

In conclusion, it is submitted that in reviewing the law as set forth in the briefs, and the record on appeal, a finding that Mr. Stone was guilty of a usurious transaction by representing a lender is not justified and for that reason, the Referee's recommendation should be disregarded and this Court should impose a lesser sanction against Charles Wm. Stone.

I HEREBY CERTIFY that the original and seven copies of the foregoing have been furnished to Clerk of Supreme Court, The Supreme Court of Florida, Supreme

Court Building, Tallahassee, Florida 32301, and one copy to each of the following,
this the 23rd day of August, A.D., 1988:

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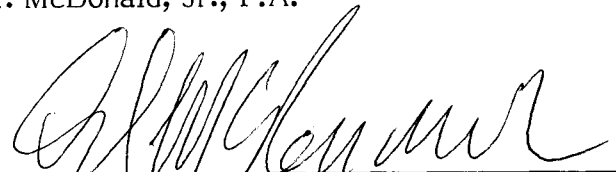
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Respectfully submitted,

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