

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Petitioner,

-vs-

CASE NO: 72,985

FREEMAN D. TATE,

Respondent.

FILED
SID J. WHITE

APR 14 1989

REPORT OF THE REFEREE/CLERK, SUPREME COURT

I. SUMMARY OF PROCEEDINGS

By _____
Deputy Clerk

Pursuant to the undersigned being duly appointed as Referee to conduct proceedings herein according to Rules 10-5.1(b)(6), Rules Regulating The Florida Bar, the following proceedings occurred:

A Petition against the unlicensed practice of law was filed by Petitioner on or about September 1, 1988. On or about September 13, 1988, the Supreme Court of Florida issued an Order to Show Cause ordering Respondent to file a written answer admitting or denying the allegations of the Petition within twenty (20) days of service of the Petition.

Respondent was served by substitute service on or about November 2, 1988, and on or about November 30, 1988, Respondent filed his Answer pursuant to the Order to Show Cause to the Petition.

This matter was assigned to the undersigned Referee on January 6, 1989, with directions to file a report within one hundred eighty (180) days of the date of the Order of Referral.

Upon Appointment, the undersigned Referee scheduled a pre-trial conference for January 24, 1989. Although the Petitioner appeared by counsel at the pre-trial conference, the Respondent failed to appear and otherwise failed to thereafter contact this Referee. Accordingly, on January 24, 1989, this Referee set this matter for trial on February 15, 1989. An Order Setting Cause for Trial was duly entered and forwarded to the Respondent.

On the morning of February 15, 1989, this Referee was

contacted by the Respondent, who indicated that he would be unable to appear for trial at that time and that he required additional notice to properly schedule his ability to appear for trial in Miami, Florida. Further, counsel for Petitioner indicated he had discussions with the Respondent and that the Respondent was amenable to entering into a Stipulation/Consent Decree.

Accordingly, this Referee continued the matter for a two (2) week period in order to facilitate and allow such settlement; however, notice was given to both parties that the matter would be re-set for trial on March 1, 1989, should the settlement not be effectuated. Thereafter, this Referee had no contact with the Petitioner or Respondent until March 1, 1989 at 2:00 p.m., the time set for the trial of this matter. At such time, this Referee was hand-delivered a letter indicating Respondent's inability to appear at trial, and desire to obtain discovery which he was contemporaneously then seeking. Upon review of the letter from the Respondent, after receiving arguments of counsel from the Petitioner's counsel, and after otherwise reviewing the history of this file, this Referee then concluded that the Respondent was engaging in dilatory practices, and was otherwise not acting in good faith and would therefore not be entitled to any further continuance of these proceedings.

Accordingly, this Referee thereupon took judicial notice of case number 83-18088 Civ.-23, Eleventh Judicial Circuit, and case number 86-1649, filed in the Civil Division of the County Court of the Eleventh Judicial Circuit, as well as copies of the docket sheets for United States Bankruptcy Court, Southern District of Florida, Case Number 83-00560-BKC-SMW, In Re: Rent-A-Bench, Inc., and a copy of a Motion for Extension of Time and To File Disclosure Statement and Plan of Arrangement from United States Bankruptcy Court, Southern District of Florida, Case Number 83-00412-BKC-TCB, In Re: South Dade Sign Company Corporation, Debtor, as well as the proffered deposition of the Respondent and proffered testimony of Petitioner's witnesses. All of the aforementioned pleadings, attachments

thereto, and Exhibits received in evidence and this Report, constitutes the record in this case and are forwarded to the Supreme Court of Florida.

II. FINDINGS OF FACT

A. Jurisdictional Statement. Respondent, at all times material herein, was not and is not a member of The Florida Bar, and was not therefor licensed to engage in the practice of law in the State of Florida.

B. This Referee does find that the Respondent did in the past engage in the practice of law in the State of Florida as said practice has been defined in The Florida Bar v. Sperry, 140 So.2d 587 (Fla. 1962), rev.'d on other grounds, 373 U.S. 379 (1963); The Florida Bar v. Scussell, 240 So.2d 153 (Fla. 1970); The Florida Bar v. Moran, 273 So.2d 390 (Fla. 1973); The Florida Bar v. Kaiser, 397 So.2d 1132 (Fla. 1981); The Florida Bar v. Kaufman, 452 So.2d 526 (Fla. 1984), by handing out business cards which do not otherwise represent him to be a foreign attorney; by not properly representing himself to be a foreign attorney who is not licensed to practice law to clients who engaged him in this jurisdiction, by filing pleadings as attorney of record in Dade County Circuit and County Courts without first obtaining proper Court authorization to appear pursuant to applicable Rules of Judicial Administration and by otherwise "practicing law" in this jurisdiction without obtaining admission into The Florida Bar.

III. RECOMMENDATIONS

Based upon the foregoing Findings of Fact, it is the recommendation of the undersigned Referee as follows:

A. That the Respondent be found to have engaged in the unlicensed practice of law in the State of Florida.

B. That Respondent be restrained and enjoined from representing to anyone that he is a member of the Florida Bar: from utilizing any cards, letterhead or other written material identifying him as attorney at law without otherwise specifying that he is only admitted to practice in the State of Pennsylvania and from otherwise engaging in the practice of law in the State

of Florida.

C. That the costs of this proceeding be taxed against the Respondent.

IV. MANNER IN WHICH COSTS SHOULD BE TAXED

I find the following costs were reasonably incurred by The Florida Bar:

A.	Out of pocket expenses	\$	4.00
B.	Oswaldo J. Rubi (service of process)		28.00
C.	Witness Fee (Donald S. Rose)		7.00
D.	Miscellaneous reimbursement (attorney out of pocket)		2.00
E.	Telephone charges (02/28/89)		.33
F.	Telephone charges (02/28/89)		1.65
G.	Telephone charges (03/10/89)		2.81
H.	Miscellaneous reimbursement (attorney out of pocket)		1.00
I.	Deposition transcript		<u>209.70</u>
	TOTAL COSTS		\$256.49

It is recommended that such costs be charged to Respondent and that interest at the statutory rate shall accrue and be payable beginning thirty (30) days after the Judgment in this case becomes final.

Dated this 10th day of March, 1989.

By: 

Judge John Gale, Referee
73 West Flagler Street
Room 400
Miami, Florida 33130

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Report of Referee has been mailed to Sid J. White, Clerk of the Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32301; and that copies were mailed by regular U.S. Mail to Mary Ellen Bateman, U.P.L. Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300; and to Lori S. Holcomb, Assistant Unlicensed Practice of Law Counsel, The Florida Bar, Tallahassee, Florida 32399-2300; and to David H. Charlip, Co-Counsel for The Florida Bar, MARTINEZ, CHARLIP &

DELGADO, Interterra Building, 8th Floor, 1200 Brickell Avenue,
Miami, Florida 33131; and to the Respondent, FREEMAN D. TATE,
6320 N.W. 200th Street Terrace, Miami, Florida 33015, on this
_____ day of _____, 1989.

MARTINEZ, CHARLIP & DELGADO
Attorneys and Counselors at Law
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1200 Brickell Avenue
Miami, Florida 33131
(305) 372-1636

By : _____
DAVID H. CHARLIP
Fla.Bar. #329932