IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

LAURENCE GOLDEN,

Respondent.

Supreme Court Case
No. 73,553

The Florida Bar File
No. 88-51,160(17C)

REPLY BRIEF OF THE FLORIDA BAR

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STATEMENT OF THE CASE AND FACTS

Respondent erroneously states that the Referee found previous cumulative misconduct. The Referee's Report at Page 3 finds cumulative misconduct, but does not state previous cumulative misconduct.

SUMMARY OF ARGUMENT

THE DISCIPLINE TO BE IMPOSED IN THIS CAUSE SHOULD BE DISBARMENT FOR A PERIOD OF FIVE (5) YEARS

The referee found that the respondent improperly disbursed escrow funds to his client after he was on notice that the funds were in dispute and that the respondent acted in bad faith on more than one occasion.

Respondent's criminal case regarding insurance fraud, the acts of cumulative misconduct present in this case, and the several aggravating factors present in this cause warrant disbarment.

ARGUMENT

THE DISCIPLINE TO BE IMPOSED IN THIS CAUSE SHOULD BE DISBARMENT FOR A PERIOD OF FIVE (5) YEARS

Respondent has stated in his brief that the Referee should not have considered Respondent's previous disciplinary case in reaching his recommendation because the present misconduct occurred prior to Respondent's insurance fraud offense. The Florida Bar v. Golden, 544 So.2d 1003 (Fla. 1989). Respondent cites The Florida Bar v. Carter, 429 So.2d 3 (Fla. 1983), wherein this court found that the misconduct complained of occurred prior to a previous case which resulted in discipline and did not fall within the category of cumulative misconduct. Additionally, this court in Carter stated that the violations in the second disciplinary case were in a technical sense only and were surrounded by mitigating and extenuating circumstances. Id, at 4. This Court has held that cumulative misconduct exists wherein the cumulative misconduct occurs at the same time or close in time to the other offenses. In The Florida Bar v. Baron, 302 So.2d 1318 (Fla. 1981), the Respondent attorney was found to have engaged in cumulative misconduct wherein four separate discipline cases were brought against him. Cumulative misconduct can concern new offenses and prior offenses and it can also concern cumulative instances of misconduct occurring close in time as evidenced by the Baron Opinion supra.

Respondent's argument appears to be that a Respondent who commits several acts of wrongdoing close in time to one another

should not be treated harshly. This argument belies reason. The Florida Bar suggests that the Carter opinion relied on the specific facts and circumstances present in the Carter case, and said factors are not appropriate in the present case.

Respondent's prior case, The Florida Bar v. Golden, 544 So.2d 1003 (Fla. **1989),** wherein he engaged in the serious offense of insurance fraud, is a record of discipline. The instant case is certainly additional acts of misconduct. Regardless of which came first, cumulatively the offenses are serious and evidence Respondent's derelictions as an officer of this Court.

The Referee's findings in this instant case alone demonstrate several acts of cumulative misconduct committed by the Respondent. The Referee in his findings found in pertinent part:

(1) that Respondent wrongfully returned funds to his client that he held in escrow after he was on notice that the funds were in dispute and opposing counsel had demanded the release of said funds,

(2) that respondent violated his duties as fiduciary and escrow agent,

(3) that Respondent acted in bad faith when he attempted on August 21, **1989** to negotiate with the attorney for the party who owned the property in issue, to purchase the property directly from the attorney's client in an attempt to interfere with the Nuzzo contract and with the stated motive of getting a nice fee for himself. (testimony of William Stockman, Esq., Exhibit 17),

(4) that Respondent acted in bad faith and falsely represented on August 28, 1985, to Jackie Jernigan, a secretary of George Patterson, Esq., that he had already returned the $22,500 deposit monies to his client, when in fact such monies were not returned until September 9, 1985 (T. 53-57 and Exhibits 6, 7, 15).

(5) The Referee found that the Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation and violated the specific purpose doctrine (RR, Page 3).

The Referee in his report further found that the following aggravating factors were present:

(a) Prior disciplinary offense

(b) Dishonest or selfish motive

(c) A pattern of misconduct

(e) Refusal to acknowledge wrongful nature of conduct.

Each of the above listed aggravating factors is serious in and of itself even without regard to Respondent's previous discipline for insurance fraud. The Florida Bar submits that if the instant case and Respondent's insurance fraud case were filed at the same time that disbarment would be the appropriate discipline. Respondent's brief fails to address the Referee's finding of dishonest or selfish motive. Instead, Respondent at Page 7 of his brief wrongly states that, "The Respondent in no way financially gained from returning his client's money back to his client." The instant record is clear that the Respondent attempted to profit from his wrongful acts. The Referee found the following in his findings of fact:

> *8.* I find that Respondent acted in bad faith when he attempted on August 21, **1989,** to negotiate with WILLIAM STOCKMAN, Esquire, the attorney for the party who owned the property in issue, to purchase the property directly from Mr. STOCKMAN's client in an attempt to interfere with the NUZZO contract and with the stated motive of getting a nice fee for himself (testimony of WILLIAM STOCKMAN, Esquire, Exhibit **17).** (Page 2, Report of Referee).

Respondent's misconduct listed in the Report of Referee evidences a pattern of misconduct in and of itself, and Respondent's insurance fraud case adds to the pattern of misconduct.

Respondent presented no mitigating factors in the record in this cause. Instead, Respondent now relies on mitigating factors presented in his other disciplinary case. The Florida Bar v. Golden, **544** So.2d 1003 (Fla. **1989).**

The Florida Bar is not asking for an enhanced disbarment in this cause, but only for a five (5) year disbarment for Respondent's transgressions and total indifference to the Rules of Ethics that govern attorneys.

The cases listed by Respondent in his brief do not include the serious aggravating factors found to be present in this cause. Accordingly, disbarment is warranted.

CONCLUSION

For the foregoing reasons and the reasons stated in The Florida Bar's Initial Brief in this cause, The Florida Bar respectfully requests this Honorable Court to uphold the Referee's findings of fact and recommendation as to guilt, to impose disbarment for a period of five (5) years as discipline, and tax the costs of these proceedings against Respondent in the amount of $1,327.95.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of The Florida Bar's Reply Brief was mailed to Stanley G. Swiderski, Esquire, Attorney for Respondent, 1930 Tyler Street, Hollywood, Florida 33020 and a copy was mailed to John T. Berry, Staff Counsel, The Florida Bar, Tallahassee, Florida 32399-2300 this 29th day of December, 1989.

Jacquelyn P. Needelman
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