IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Petitioner,

v.

FLORIDA SERVICE BUREAU, INC.,

Respondent.
_____/

CASE NO. ~~74,538~~ 74,030

PETITIONER'S CORRECTED ANSWER BRIEF

Mary Ellen Bateman
Fla. Bar No. 324698
THE FLORIDA BAR
650 Apalachee Parkway
Tallahassee, Florida 32399-2300
(904) 561-5600

TABLE OF CONTENTS

TABLE OF CITATIONS

STATEMENT OF THE CASE AND OF THE FACTS

Petitioner, The Florida Bar, accepts the Respondent's Statement Of The Case And Of The Facts with the following additions:

The petition filed by The Florida Bar did more than allege specific acts performed by the Respondent. The petition also set forth the general operating procedures of Florida Service Bureau, Inc. The petition alleged that the Respondent is contacted by the client/landlord when an eviction is necessary. An employee of Respondent obtains all the necessary information and completes a statutory three-day notice and then prepares the Complaint for Tenant Eviction based on the information obtained from the client.

The Petition further alleges that the Complaint is reviewed by a member of The Florida Bar who signs the Complaint as attorney. The client pays the Respondent for these services a percentage of which is paid to the attorney. The Respondent continues to represent the client in the eviction process by remaining in contact with the client and performing all necessary services such as delivering documents, serving subpoenas and acting as a

liaison between the client and the attorney. If the eviction becomes contested the client, through Respondent, agrees to hire the attorney and pay him an attorney's fee.

Petitioner's Witness Quintero

In addition to the testimony outlined by Respondent, witness Quintero testified to the following:

The witness assisted in the investigation of Florida Service Bureau in his capacity as a staff investigator for The Florida Bar. (TR 14)

When the witness spoke to Norm Bragis at the landlord/tenant section in the Dade County Courthouse he was checking to see how many cases were being filed by or through Florida Service Bureau or its president. (TR 19) In response to his inquiry, he received a print-out of court eviction cases involving Sabal Palm Villas Housing. (TR 19)

While visiting the offices of Florida Service Bureau, Mr. Quintero did not see the name of Jay Fabrikant, Attorney, on any door. (TR 33)

One of the males in the offices of Florida Service Bureau told Mr. Quintero that he was getting ready to take

the eviction requests to the court for filing. (Tr 38) Mr. Quintero testified that he saw the requests or notices being prepared in front of him. (TR 38)

Petitioner's Witness Rodriguez

In addition to the testimony outlined by Respondent, witness Rodriguez testified to the following:

Mr. Rodriguez testified that he believes there was a sign identifying the Respondent's facility as "tax services" and "Florida Service Bureau". (TR 44)

After inquiring about the procedure involved in an eviction, Mr. Rodriguez was asked by Lollie if he had his lease with him. (TR 46) Mr. Rodriguez told Lollie he did not. (TR 46) Lollie explained to Mr. Rodriguez that he could not do anything in any event until midnight Sunday because "weekends did not count." (TR 46,47) Lollie told Mr. Rodriguez that if the person did not respond to the three day notice she would then file a complaint with the courthouse. (TR 47)

As outlined in Respondent's brief, Lollie told the witness:

> In the event that the people contested or fought the eviction, then they would

> get an attorney for me to go to a hearing for an additional #100.00. (Tr 47)

Lollie went on to tell the witness that the contested eviction was rare "especially someone in arrears for three months." (TR 47) Lollie explained that after five days if they did not appear the sheriff gets a writ to remove the people from the property. (TR 47)

Mr. Rodriguez testified that Lollie showed him an eviction that was being done in Palm Beach and that he recorded the person's name and telephone number. (TR 49) Lollie did not give him the name of an attorney . (TR 49)

Lollie explained that in the event he had to go to court $100.00 would be required for the attorney but that would only be necessary if the eviction was contested. (TR 50)

In testimony regarding who would fill out the paperwork for the eviction, Mr. Rodriguez testified that Lollie said ". . . she was going to handle, give her the call, give her the name. She didn't make clear whether she was going to do it or someone else." (TR 51) However, Mr. Rodriguez testified that Lollie said to give her "[n]ames, leases and she would take care of everything." (TR 51)

Lollie provided to the witness a business card that indicated that Lollie was the office manager of Florida Service Bureau. (TR 49,50)

Although Mr. Rodriguez testified that during his investigation he did not find Florida Service Bureau filling out forms, the witness did state that Lollie showed him a stack of forms which Lollie claimed she did. (TR 59) Mr. Rodriguez stated he saw in that stack a complaint for Artie Williams. (TR 59)

Respondent's Witness Fabrikant

Witness Fabrikant testified that the only individuals at Florida Service Bureau who prepare complaints are Lollie and occasionally Claudia and that they are both salaried employees of the witness Fabrikant when they are doing that. (TR 76)

Witness Fabrikant testified regarding his long-standing relationship with Florida Service Bureau and admitted that he has a vested interest in what happens to Florida Service Bureau because he generates so much business from them. (TR 79)

The witness, an attorney, testified that it would be inappropriate and improper for an employee of Florida Service Bureau to give legal advice if the employee was not part of the witness' office or paid by the witness and if the advice went beyond whatever somebody who works for him would be entitled to give. (TR 80)

The witness testified that he was not at the office to supervise his employees on a constant basis. (TR 81)

The witness agreed that it would be improper for the employees of Florida Service Bureau to obtain information orally from landlords and type and print that information on a tenant eviction complaint. (TR 82) However, the witness did believe that an employee could take information from a landlord and prepare a three-day notice. (TR 82)

SUMMARY OF ARGUMENT

The Referee had adequate evidentiary support for the findings of fact included in the Referee's Report. Accordingly, the Referee's finding cannot be deemed to be clearly erroneous or wholly lacking in evidentiary support and should be approved.

There was adequate testimony that Respondent advises landlords regarding legal matters, offers to prepare tenant eviction complaints and prepares legal forms necessary for the tenant eviction process based on information communicated orally by the landlord/client in contravention of The Florida Bar v. Mickens, 505 So.2d 1319 (Fla. 1987). The Referee did not disregard the testimony of attorney Fabrikant regarding his involvement with the Respondent. The Referee took Mr. Fabrikant's testimony into consideration but ultimately stated that the arrangement was a set up to avoid the law. (TR 124)

The testimony and exhibits admitted into evidence by the Referee were properly admitted. In proceedings before the Referee the evidentiary rules are relaxed and evidence that may otherwise be considered hearsay may be admitted by the Referee and considered for what it is worth. In any event,

the Respondent has failed to show that injury resulted from any technical error the Referee may have made in allowing the evidence to be admitted.

The failure of the Referee to include in her report a separate section entitled "Conclusions of Law" is harmless error. The Respondent was able to object to the Referee's Report more than adequately, as the Referee's findings and recommendations were clearly set forth in the Report.

ARGUMENT

I. THE REFEREE'S FINDING THAT THE RESPONDENT IS ENGAGED IN THE UNLICENSED PRACTICE OF LAW IS NOT CLEARLY ERRONEOUS OR WHOLLY LACKING IN EVIDENTIARY SUPPORT

A. The Referee's Findings of Fact Are Not Wholly Lacking In Evidentiary Support

The Referee had adequate evidentiary support for the findings of fact included in the Referee's Report. The suggestion that the Petitioner could have had much better proof is well taken and is a suggestion the Bar does not dispute. However, it does not automatically follow that the evidence submitted during the course of the trial was not adequate to support the Referee's findings.

The 'line by line, sentence after sentence, "fact" after "fact" review' (Resp. Brief at 19) of the Referee's findings by the Respondent may demonstrate that the Respondent would have preferred a more detailed analysis by the Referee or that Respondent may have interpreted certain evidence in a different light, but it falls far short of demonstrating that the referee's findings were erroneous or wholly lacking in support.

(1) "Respondent is an eviction service that also assists landlords in rent collections."

Respondent complains that the Referee did not define the term "eviction service," the services performed, activities involved, etc. (Resp. Brief 20) As the Referee was familiar with the case of The Florida Bar v. Mickens, 505 So.2d 1319 (Fla. 1987) (referred to erroneously in the transcript as the McKinnen case) there is no reason to believe that the Referee was attributing any other definition to that term than a definition consistent with everyday common usage and that case.

Additionally, the Referee listed in the findings of fact the services provided by the Respondent. (RR 2)

(2) "An employee of Respondent obtains information from the landlord verbally, in person or over the telephone."

Respondent asks, "What information?" (Resp. Brief 20) According to Respondent's own witness, Jay H. Fabrikant, the information obtained by Lollie Vasquez at the office of Florida Service Bureau, Inc. is that information necessary to prepare a complaint or to complete a form in landlord practice. (TR 74) "She talks to landlords who come in or

call her and give her certain information that is necessary for a complaint or a form in landlord practice to be completed, she takes that information for me." (TR 74) The testimony of Bar Investigator Quintero regarding this issue is consistent with the testimony of Mr. Fabrikant, as is the testimony of Investigator Rodriguez. (TR 51) Of course, Mr. Fabrikant would argue that while Lollie is obtaining information orally from landlords in order to prepare a complaint or complete a form, Lollie has on her employee-of-a-law-office hat and not her employee of Florida Service Bureau hat. (TR 74, 75)

(3) "Based on the information received from the landlord, the Respondent prepares and serves a statutory three-day notice."

Respondent complains that there was no testimony to support the Referee's finding that the Respondent prepares and serves a statutory three-day notice.

In all fairness, in the Answer To Petition Against The Unlicensed Practice Of Law, the Respondent states, "The Landlord, not the Respondent, prepares the statutory Three Day Notice, and sends a duplicate copy of the Three Day Notice to the Respondent for the Respondent's files." (Answer 2)

However, the proof presented at the hearing before the referee clearly indicates that this is not always the case.

Witness Fabrikant testified that, "[t]he vast majority of the landlords prepare their own three-day notices and have them served by their employees whether it be the manager, janitor, mostly they do it themselves." (TR 76,77)

Witness Fabrikant does not speak to who prepares the three-day notice for the remaining landlords of the three hundred plus evictions processed each month who decide not to do it themselves.

In his investigative report of June 7, 1990, Investigator Rodriguez states that Lollie Vazquez had provided him with the following information:

> First I must post a three day notice demanding payment of past due rent. I can do this or they F.S.B. can do it for me they will type out the form and post it for $26.80. (Exhibit 7)

(4) "Respondent offers to file a tenant eviction complaint on the landlord's behalf."

The Respondent argues that no witness testified to such "fact." It was admitted by Respondent that a courier or even

Respondent's president would physically take a complaint down to the courthouse and "file" same. (Resp. Brief 21)

In addition there was adequate evidence presented that the Respondent offered to prepare the tenant eviction complaint as well.

Witness Fabrikant admitted that Lollie Vasquez takes the information from the landlords necessary to prepare the complaints (TR 74) and then prepares the complaints. (TR 74,75,76) (Again, witness Fabrikant and Respondent would argue that when Lollie prepares the complaint she does so as a salaried employee of his and not as an employee of Florida Service Bureau, Inc.).

Additionally, in testimony regarding who would fill out the paperwork for the eviction Investigator Rodriguez testified that Lollie said to give her [n]ames, leases and she would take care of everything." (TR 51) Mr. Rodriguez also testified that while at the office of Florida Service Bureau, Inc., Lollie showed him a stack of forms which Lollie claimed she did. (TR 59)

In his investigative report, Investigator Rodriguez wrote, "Ms. Vasquez stated that they will fill out the complaint and file it in the courthouse . . ." (Exhibit 7)

(5) "The Respondent advises landlords regarding legal matters."

Again, Respondent argues that there was no proof whatsoever of this "fact."

The Bar offered two witnesses who went to the offices of Florida Service Bureau, Inc. and spoke to Lollie Vasquez inquiring about what was needed in order to evict a tenant. Investigator Quintero testified that he asked Ms. Vasquez about the eviction process, that Ms. Vasquez told him that he needed to get the tenants' names and addresses for the eviction notice (TR 27) and that after a three-day notice if the tenants do not vacate, the entire case would cost $178.50. (TR 29)

Investigator Rodriguez spoke directly to Lollie Vasquez at the Florida Service Bureau office as well. Mr. Rodriguez informed Ms. Vasquez that he had two apartment homes occupied by tenants who had been in arrears over three months. (TR 46) After indicating surprise, Ms. Vasquez stated the tenants could be removed within twenty-one days and explained the eviction process procedure to Investigator Rodriguez as follows:

> She said that I could have these people out of the premises within

twenty-one days. I said, two questions. I told her how and how come so long and she proceeded to tell me they would have to follow certain procedures that would take the twenty-one days. At which point I asked, what were they. She said, one, that they will provide a service for $210 or $215 and I said, what differentiates one from the other.

Well, if it's one person under the lease, it will be $210. If two people's names, $215.

She asked me if I had the lease with me and I said, no, I didn't. This was just trying to find out what's going on. She tells me that's the procedure followed. What they do is they give you three-day notice which is filled out and then turned around and send a process server to process it on your door.

The person has three days to respond to that. This had been a Wednesday and I remember her telling me I couldn't do anything in any event until midnight Sunday because weekends don't count.

If the person does not respond by paying the rent by that time, then she would file a complaint with the courthouse and, I said, what would happen then?

Then a process server would have to serve the people individually. It would take at least a minimum, he would have to make a minimum of three attempts, each or those attempts would have to be separated by six hours, she said. After the person has been served, she told me it would take an additional five days that they have to respond. In the event that the people contested or fought the eviction, they would get an attorney for me to go to a hearing for an additional $100. That was very rare, especially someone in arrears for three months. I said,

> what would happen after that five days, they didn't appear, then the Sheriff gets a writ to remove the people from the property and that would cost me an additional $33. I guess it's paid to the Sheriff.
>
> I said, do I have to go to court? Do I have to do anything?
>
> She said, no, the only time I would have to go to court is if the people argue or fight the eviction and then it would be a hearing and I would have an attorney present, that he would provide for me.

Additionally, Respondent's witness Fabrikant acknowledged that it would be inappropriate and improper for an employee of Florida Service Bureau to counsel landlords about legal matters regarding tenant eviction actions, but also acknowledged that he generally does not have contact with the landlord before the complaint is typed and given to him to review and sign. (TR 87) According to Investigator Rodriguez' report, it was Lollie Vasquez (not attorney Fabrikant) who advised him on "how the legal system works and what I should do in order to evict the tenants." (Exhibit 7)

(6) "Specifically, the Respondent counsels landlords as to various legal remedies available to them, prepares legal forms necessary for the tenant eviction process and fills out the eviction notice and complaint where the landlord orally communicates this information."

Contrary to Respondent's assertions that there was no proof supporting the above "fact", the evidence, as outlined above, supports the referee's finding of fact in this regard. The referee was well aware that the Bar did not offer evidence on several of the allegations made in the Bar's Petition and the referee was careful not to include those findings in her report. (TR 133)

In making her findings during the hearing, the referee stated:

> Some of the things alleged in here I am not about to make a finding on them. (TR 134)

However, the referee did make specific findings with regard to counseling landlords as to legal remedies available to them ("This allegation is supported") (TR 132) and preparing forms and filling out the eviction notice ("I am going to find that they're offering the type of printed information on tenant eviction forms where the landlord merely orally communicates such information to the respondent.") (TR 122)

(7) <u>"The Complaint is prepared by the Respondent, then signed by an attorney. The attorney, who is not an employee of Respondent does not verify the information contained in the complaint nor establish any attorney-client relationship."</u>

Respondent argues that this finding of fact was not testified to by the Petitioner's witnesses and was completely refuted by Mr. Fabrikant. Fabrikant testified that Lollie Vasquez, his part-time secretary and the office manager for Florida Service Bureau, Inc. obtains information from the landlord and types the complaints. (TR 74,76) Only after the complaint is prepared does Mr. Fabrikant review it. (TR 87) According to Mr. Fabrikant's testimony he contacts clients after reviewing the complaint <u>if</u> there is a problem with the information contained in the complaint. (TR 87,88)

There was no testimony offered that Mr. Fabrikant verifies the information in the complaint or establishes an attorney-client relationship with the client. Unless a problem arises Mr. Fabrikant does not even speak to his "clients." Based on Mr. Fabrikant's testimony alone, the Referee has sufficient evidence on which to base her finding of fact.

(8) <u>"The attorney only has contact with the client, if and when the case is litigated."</u>

Respondent complains that the finding of fact was not supported by the record.

However, witness Fabrikant testified that he "probably" has not had contact with the landlord before he receives the

complaint from Lollie Vasquez for review and signing. (TR 87) If there is a problem with the complaint, attorney Fabrikant will get the landlord on the phone and find out what he needs to know. (TR 88)

As expressed by Lollie Vasquez to Investigator Rodriguez, Florida Service Bureau would get an attorney for the landlord if the tenant contested or fought the eviction but that was very rare. (TR 47)

The testimony indicates that if there is no problem with the complaint and the eviction is not contested the attorney has no contact with the client.

(9) "Respondent maintains control over the legal services that are offered, maintains control over the day-to-day operation of the business and controls who the clients will be."

As Respondent has conceded this finding, no argument will be made in support of it except to direct the court to the Referee's specific findings on page 132 of the transcript.

(10) "Respondent is paid by the landlord/client for rendering legal services."

The Respondent refrains from the argument that it does not receive a fee for its services--instead the Respondent argues that it is not paid for rendering legal services.

The evidence supports the Referee's findings in Nos. 4, 5 and 6 (above) that legal services are being provided by the Respondent. No further argument in this regard will be offered here.

(11) "Respondent maintains the client's files and has access to the client's files."

Respondent argues that no files were introduced into evidence. This is correct. The evidence supporting the Referee's finding that Florida Service Bureau maintained the client's files and has access to those files is found in Mr. Fabrikant's uncontradicted testimony.

Mr. Fabrikant, when asked who maintains control over the files, responded that she (Lollie Vasquez) does. (TR 89)

Mr. Fabrikant explained further:

> They're maintained in both places, sir. I have files at my office in Hollywood and they have files down there and if an answer is received by me on a case, as an example, the landlord tenant case is filed, as you probably know a tenant has five days to file written reasons

> or if they file copies sent to me, I then make two copies of that particular answer. One I give to Lollie to put in the file down there and besides the one I keep in my office in Hollywood and another copy I send to my clients.

(12) "Respondent maintains and controls communication with the client."

Respondent asks, "What communications?" and points out that communications can be about rental arrearages, building maintenance, collections, delivering Three-Day Notices, etc. and not with regard to legal advice.

However, the testimony of Investigator Rodriguez and Investigator Quintero indicated that conversations at the Florida Service Bureau, Inc. office tended to be about tenant eviction procedure and fees. Since Mr. Fabrikant's testimony was that 1) he has two offices and is not always available to supervise his employees, 2) that he responds to messages left by Lollie Vasquez, and 3) that he generally does not have contact with landlord/clients unless litigation takes place, the Referee's findings that Respondent maintains and controls communication with the client is supported by the evidence.

As recognized by the Respondent, the Referee's findings of fact should be accorded substantial weight and not be overturned unless clearly erroneous or lacking in evidentiary

support, The Florida Bar v. Furman, 451 So.2d 808 (Fla. 1984).

The line-by-line review of the Referee's findings of fact and the evidence in the record supporting those findings demonstrate that the Referee's findings were not lacking in evidentiary support.

The referee did not reach her findings of fact hurriedly or carelessly. After both parties had been given an opportunity at the final hearing to present their evidence, the Referee engaged in a lengthy discussion with counsel for both parties with regard to the evidence presented, the lack of evidence in some areas and her proposed findings and recommendations. Each party had an opportunity to point out the weaknesses and strengths of their case as well as their opponent's case. (TR 92-134)

After careful consideration, the Referee outlined her findings.

The Respondent may not agree with the Referee's conclusions but disagreement alone cannot justify overturning those conclusions.

In The Florida Bar v. Bennett, 246 So.2d 107 (Fla. 1971) (a disciplinary case, not an unlicensed practice of law

case) the Referee reached a certain conclusion that the Court determined was supported by evidence in the transcript. However, the Court recognized that the Referee could have also reached a contrary conclusion. The Court approved the findings of the Referee on the conflicting facts stating that "the determinations of a trier of fact will not be disturbed by the reviewing court unless there is manifest error therein." Bennett, 246 So.2d at 108.

As there has been no manifest error shown by the Respondent in the instant case, the Referee's findings of fact should not be disturbed.

B. The Referee's Finding That The Respondent Is Engaged In The Unlicensed Practice of Law Is Not Erroneous

The Respondent argues that, under the established case law, there is no case of unlicensed practice of law against the Respondent and that the Referee's finding in this regard is erroneous.

The Respondent attempts to distinguish State ex rel. The Florida Bar v. Sperry, 140 So.2d 587 (Fla. 1972) judg. vacated on other grounds, 377 U.S. 379 (1963); The Florida Bar v. Consolidated Business and Legal Forms, 386 So.2d 797 (Fla. 1980), The Florida Bar v. Brumbaugh, 355

So.2d 1186 (1978) and The Florida Bar v. Mickens, 465 So.2d 1186 (Fla. 1978) on the facts.

The Florida Bar recognizes that the cases cited in its Petition Against The Unlicensed Practice Of Law are not all squarely on point. In unlicensed practice of law matters it is the exception, rather than the rule, to have a case directly on point.

Instead of arguing the letter of the law, the Bar must often argue that the actions of a particular Respondent violate the spirit of this Court's decisions in other unlicensed practice of law cases. That is what the Bar has argued here with regard to the Sperry decision.

In Sperry, the Court set forth the closest thing we have in Florida to a definition of the practice of law. The text of the definition is included in the Respondent's brief so it will not be repeated here. (Resp. Brief 26) Basically, the Sperry decision established a three-prong test for determining if certain conduct constitutes the practice of law. The first question to be asked is whether the giving of such advice and performance of such services affect important rights of a person under the law. The second question to be addressed is whether the reasonable protection of the rights and property of those advised and served requires that the persons giving such advice possess

legal skill and a knowledge of the law greater than that possessed by the average citizen. Third, the advice or services must be for another as a course of conduct.

The Sperry test is used as a general standard for determining if certain conduct constitutes the unlicensed practice of law. In The Florida Bar v. Brumbaugh, 355 So.2d 1186, (Fla. 1978) this Court, after quoting the Sperry "definition" said, "This definition is broad and is given content by this Court only as it applies to specific circumstances of each case." Brumbaugh, 355 So.2d at 119

In Brumbaugh, as in the instant matter, the specific circumstances of the case involved a nonlawyer assisting customers with the preparation of legal documents and advising customers as to the costs involved and the procedures which should be followed. The Court recognized the "tendency of persons seeking legal assistance to place their trust in the individual purporting to have expertise in the area" and determined that Ms. Brumbaugh and others in similar situations may sell printed material purporting to explain legal procedure and sell sample printed forms. Brumbaugh, 355 So.2d at 1193. In addition, this Court found that it would not be improper for the nonlawyer to engage in a secretarial service and type forms for the clients, provided that she only copy information given to her in writing by her clients.

However, the Court found that Ms. Brumbaugh must not engage in advising clients as to the various remedies available to them or otherwise assist in preparing the necessary forms. Ms. Brumbaugh was prohibited from engaging in personal legal assistance in conjunction with her business activities, including the correction of errors and omissions.

The testimony of the witnesses and the findings of facts by the Referee demonstrate that Respondent's activities fall outside of the limitations on nonlawyer conduct as outlined in the Brumbaugh decision.

In addition to the Sperry test and the Brumbaugh opinion, the Court has set forth specific guidelines in the area of evictions in The Florida Bar v. Mickens, 465 So.2d 524 (Fla. 1985) (Mickens I) and The Florida Bar v. Mickens, 505 So.2d 1319 (Fla. 1987) (Mickens II).

In Mickens I, this Court approved the Referee's Report which recommended that respondent be permanently enjoined from filing initial tenant eviction complaints for residential and corporate landlords; counseling landlords regarding legal matters; filling out eviction forms where the landlord orally communicates the information to be filled in; and appearing in court or any other judicial tenant eviction proceeding.

As pointed out by the Respondent, the Referee noted that the respondent could file initial complaints on behalf of natural persons in nonresidential tenant eviction actions and could fill in eviction forms where the landlord furnishes the required information in writing.

In Mickens II, the referee found:

> Chapter 83 restricts the role of a landlord's non-attorney agent in eviction actions exclusively to non-residential tenancies. In non-residential tenancies, Part I of the chapter permits the non-attorney agent to file the initial complaint for distress of rent or tenant eviction. In contrast, residential tenancies are governed by Part II of the chapter, which states that only the landlord may file a complaint for eviction. Because Part II does not reference the provision in Part I for filing eviction or distress of rent actions and only addresses actions filed by the landlord, § 83.59(2), Florida Statutes, may be construed as excluding non-attorney agents from filing on behalf of a residential landlord.
>
> Further, in matters regarding tenant eviction actions, a landlord's non-attorney agent may not: (1) counsel the landlord about legal matters regarding tenant eviction actions, (2) appear in court or in any proceeding which is part of the tenant-eviction judicial process, or (3) type or print information on tenant eviction forms unless the landlord gives such information to its non-attorney agent in writing.

This Court approved the findings of the referee in Mickens II and enjoined the respondent from the activities set forth above. The Court directed that Mickens be immediately taken into custody and incarcerated in the Dade County jail for twenty days. Mickens was also fined $1000.00.

Although Respondent argues that the instant cases is not a Mickens case, a review of the Referee's findings would dispute that argument. The referee found that Florida Service Bureau, Inc., among other things, advised landlords about legal matters, prepared a statutory three-day notice and offers to file a tenant eviction complaint on the landlord's behalf, fills out the eviction notice and complaint where the landlord orally communicates this information to Respondent--many of the same activities Mickens was enjoined from engaging in.

The Respondent's conduct as outlined by the Referee falls within the Sperry definition, the prohibited activities set forth in Brumbaugh and the specific prohibitions of the Mickens cases.

The Respondent has attempted to avoid the force and effect of these decisions by arguing that the "legal" aspects of the eviction service are actually handled by Lollie Vasquez under the supervision of attorney Fabrikant or by attorney Fabrikant himself. This assertion is contrary to

the evidence. Neither of the Bar investigators was informed of Ms. Vasquez' connection with attorney Fabrikant. Instead she held herself out as the office manager for Florida Service Bureau, Inc. and produced a business card to that effect.

The Referee was not persuaded by the Respondent's argument although there was much discussion with regard to Ms. Vasquez' appropriate role.

The Referee while making her findings stated:

> Being able to hide behind somebody who is licensed to practice law on one hand and on the other hand providing legal services when you're not an attorney to do so, you're not doing so under the name of the attorney, that bothers me. (TR 121)
>
> . . . you're creating a situation where you're creating a lot of confusion . . . in the minds of the public, I am sure. Either directly, expressly or implicitly representing that you're engaging in the practice of law. (TR 125)

As the Respondent's activities fall within the case law on the subject and the Respondent cannot avoid the unlicensed practice of law rules by hiding behind attorney Fabrikant's shingle, the Referee's findings are not erroneous and should be approved.

II. THE EVIDENCE ADMITTED BY THE REFEREE WAS PROPERLY CONSIDERED FOR ITS RELIABILITY AND PROBATIVE VALUE

The Respondent raises several objections concerning certain testimony and exhibits admitted by the Referee into evidence.

The Respondent argues that the Referee erroneously permitted hearsay testimony by permitting Investigator Quintero to testify as to questions he asked of Norm Bragis at the Dade County Courthouse (TR 17) and by admitting Investigator Rodriguez' report into evidence.

In addition, Respondent argues that the Referee erred in permitting testimony by Investigator Rodriguez concerning his June, 1990 investigation of the Respondent (TR 41-52) and by admitting an unauthenticated computer print-out into evidence. (TR 22)

The Respondent does not argue that the evidentiary rulings by the Referee affected a substantial right of the Respondent except to state, with regard to the admission of Investigator Rodriguez' testimony, that 'it is obvious from the Referee's report that she must have relied upon the Rodriguez testimony in some fashion to "prove the complaint."' (Resp. Brief 33)

Without a showing that a substantial right of the Respondent has been affected by the Referee's ruling, the error, if any, should be deemed harmless. "Technical error, committed by a trial court in the reception or rejection of evidence, does not necessarily constitute harmful error. It is injury resulting from error that warrants an appellate court in reversing a judgment of the trial court." Butler v. State, 94 Fla. 163, 113 So. 699 (1927).

The Respondent has failed to allege, let alone demonstrate, any injury. For example, if the Referee did rely on certain aspects of Investigator Rodriguez' testimony to "prove the complaint," which findings of fact are attributable only to Rodriguez' testimony?

When Investigator Rodriguez began to testify at the final hearing, Respondent's counsel objected to the testimony arguing that the testimony of the witness was outside the parameters of the complaint and that the Respondent was not prepared to respond to "something that happened in June of 1990 when there has been no amendment to the complaint or anything of that nature." (TR 42) Bar Counsel responded by arguing that the activities of the Respondent have been continuing in nature and that in seeking injunctive relief it was important to show a continuing violation. (TR 42, 43)

The Referee, after hearing argument on the issue, allowed the testimony stating, "I will let you do it in the sense that it goes to the weight of the evidence, not to prove the complaint." (TR 43)

The Referee was aware of the limitations of the evidence presented and without specific examples from the Respondent showing where the Referee strayed from her ruling and relied solely on Investigator Rodriguez' testimony to support her findings of fact, the Respondent's objections should be rejected.

Additionally, the strict rules of evidence do not apply in cases tried by a referee. In Bar disciplinary cases, for example, hearsay is admissible and there is no right to confront witnesses face to face. The referee is not barred by the technical rules of evidence. The Florida Bar v. Vannier, 498 So.2d 986 (Fla. 1986).

Like disciplinary cases, unlicensed practice of law cases are partly administrative in nature. The Florida Supreme Court is not confined to act solely in its judicial capacity. "In addition, it acts in its administrative capacity as chief policy maker, regulating the administration of the court system and supervising all persons who are engaged in rendering legal services to members of the general public." Brumbaugh, supra, 355 So.2d at 1189.

Partly because of their administrative character, proceedings before a referee in the area of unlicensed practice of law are not governed by technical rules of evidence.

In the instant case, the referee recognized that the evidentiary rules were relaxed and properly admitted certain evidence after hearing arguments from counsel for both parties concerning its reliability and probative value. The Referee was made well aware of the limitations of the evidence presented.

As the Respondent has failed to demonstrate that the admitted evidence resulted in any injury to the Respondent, any technical error that may have been made by the referee should be deemed harmless error and the findings and recommendations of the Referee should be approved.

III. RULE 10-5.1(c)(6) REQUIRES THE REFEREE TO FILE A WRITTEN REPORT STATING, AMONG OTHER THINGS, CONCLUSIONS OF LAW.

The Referee failed to include a separate section entitled "Conclusions of Law" in her report. The Referee did include a section of the report entitled "Recommendations" wherein the Referee recommended that the Respondent be found to be engaged in the unlicensed practice of law. (RR 3) Although not formally referred to as a "conclusion of law," it is apparent that it was the Referee's conclusion that the Respondent was engaged in the unlicensed practice of law.

In any event, the error was a technical one which caused no injury to the Respondent as they were clearly able to understand the Referee's finding and frame their objections.

CONCLUSION

The Respondent has failed to show that the Findings of Fact of the referee are clearly erroneous or wholly lacking in evidentiary support. Additionally, the Respondent has failed to show harmful error.

Accordingly, the Recommendations of the Referee should be approved by this Court. In the event this Court should determine that the objections of the Respondent are meritorious, Petitioner would request that the case be remanded to the referee for a new trial.

Respectfully submitted,

Mary Ellen Bateman
MARY ELLEN BATEMAN
UPL Counsel
Fla. Bar No. 324698
The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300
904/561-5600

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U. S. mail to Bernard B. Weksler, Attorney for Respondent, 522 Gables International Plaza, 2655 LeJeune Road Coral Gables, Florida, 33134 this 20th day of February 1991.

Mary Ellen Bateman

MARY ELLEN BATEMAN