IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

vs.

EDITH BROIDA,

Respondent.
_____/

Supreme Court Case Nos. 74,373
74,825

ANSWER BRIEF OF THE FLORIDA BAR

WARREN JAY STAMM
Bar Counsel
Florida Bar 582440
Suite M-100, Rivergate Plaza
444 Brickell Avenue
Miami, Florida 33131
(305) 377-4445

and

JOHN T. BERRY
Staff Counsel
650 Apalachee Parkway
Tallahassee, Florida 32399-2300
(904) 561-5839

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STATEMENT OF THE CASE

After a finding of probable cause at grievance committee level on April 17, 1989 [Supreme Court Case No. 74,378; The Florida Bar File No. 87-24,748(11G)] a complaint was filed on July 7, 1989 wherein it was alleged that, among other things, Respondent, Edith Broida, argued ex parte motions for change of venue before the Honorable Judge Mary Ann MacKenzie and the Honorable Judge Irwin Berkowitz and made material misrepresentations of fact and law to County Court, Circuit Court and Appellate Court judges.

After a finding of probable cause at grievance committee level on September 12, 1989 [Supreme Court Case No. 74,825; The Florida Bar File No. 89-71,156(11G) a complaint was filed on October 9, 1989 wherein it was alleged that, among other things, Respondent, Edith Broida, in responsive/defensive pleadings in a pending Dade County Circuit Court action stated that opposing counsel for plaintiff was incompetent, unable to read and comprehend documents and is not qualified to conduct discovery. Additionally, the judge assigned to hear the underlying circuit court action, the Honorable Judge Stuart Simons, questioned the competency of Respondent, Broida.

Respondent, Broida, filed in these Bar proceedings multiple pleadings and motions seeking to disbar Bar Counsel, disqualify the Referee for prejudice and incompetency and petitioned the Chief Justice of the Supreme Court of Florida to take control of the grievance system. There were 11 motions filed in total by

Respondent.

Case No. 74,378 proceeded to hearing on February 16, 1990 and both The Florida Bar and Respondent presented evidence in support of their complaint and defenses thereto.

With respect to Case No. 74,825, Respondent failed to respond to the Complaint and Request for Admissions and the matters were deemed admitted. Each side argued recommended discipline and aggravating and mitigating factors to be considered by the Referee.

On April 27, 1990, the Referee found the Respondent guilty as to each count charged in the respective complaints. The Referee then entered an order recommending that the Respondent be suspended from the practice of law for a period of one year.

STATEMENT OF FACTS

Supreme Court Case No. 74,378 (Klein Matter)

Attorney Robert M. Klein was representing Samuel Smith in a legal malpractice action which was filed by Respondent in Dade County Circuit Court. On September 24, 1985 Respondent argued an ex parte Motion for Change of Venue before the Honorable Mary Ann MacKenzie. Respondent failed to serve Mr. Klein with either a copy of the Motion or Notice of Hearing and gave him no prior notice of the hearing, mailing the Motion for Change of Venue to Klein on September 24, 1985. The Motion was granted and an Order granting change of venue was issued.

Because of Respondent's failure to pay the transfer fees to have this case assigned to Broward County, the case was not transferred to Broward County until October 28, 1985. After hearing in Broward, the Honorable Judge Paul Marko ordered the case transferred back to Dade County. Respondent appealed this transfer and on October 22, 1986 the Fourth District Court of Appeal affirmed Judge Marko's decision and transferred the case back to Dade County. This was confirmed by a Mandate issued by the Fourth District Court of Appeal remanding the case back to Dade County.

On March 10, 1987 Respondent secured an ex parte Order from Broward County Judge Irwin Berkowitz returning the files to Broward County since Respondent represented to Judge Berkowitz that the return of the files to Dade County was premature since there were pending Motions and hearings before the Court in

Broward County. Such was not the case. Respondent failed to serve Klein with a copy of the Motion or Notice of Hearing on Respondent's Motion for Return of File to Broward County. Respondent led Judge Berkowitz to believe that the Order he entered was an Agreed Order between the parties and that all parties agreed to the transfer back to Broward County.

As a result of Respondent's misrepresentation to the Court, on March 27, 1987 attorney Klein had to file a Petition to Enforce Mandate or in the alternative Petition for Writ of Mandamus, Petition for Writ of Certiorari and Petition of Writ of Prohibition with the Fourth District of Appeal. On December 18, 1987 the Fourth District Court of Appeal granted attorney Klein's Petition to Enforce Mandate, directing the Clerk of Broward County to transfer the file to the Clerk of Dade County pursuant to the Mandate issued on March 3, 1987.

The case proceeded forward in Dade County.

Supreme Court Case No 74-825 (Simons Matter).

Respondent, Edith Broida was representing Marion D. Sherrill and Dorothea E. Sherrill in a suit brought on an unsecured promissory note styled Florida Savings Bank, Plaintiff, v. Marion D. Sherrill and Dorothea E. Sherrill, Defendants, Circuit Court Case No. 88-28230 CA 03, Dade County, Florida.

This action was pending before the Honorable Judge Stuart Simons of the Eleventh Circuit.

That also pending in the Eleventh Circuit, General

Jurisdiction Division was an action styled Professional Savings Bank, Plaintiff vs. Sanbar Arabians, Inc., Marion D. Sherrill, Dorothea E. Sherrill, etc., Defendants, Circuit Court Case 88-24792 CA 17 Dade County, Florida in which Respondent was also counsel for defendant Sherrills. This action was for the foreclosure of a mortgage and was being heard by the Honorable Judge George Orr of the Eleventh Circuit.

That incident to the underlying action on the unsecured promissory note then pending before Judge Simons, Respondent, on December 27, 1988 filed a Request for Production of Documents requesting numerous documents unrelated to the claim on the unsecured note. A response to Request for Production was filed objecting to the request on the grounds that the requests were overbroad, made for the purpose of harassing and burdening plaintiff and were irrelevant. Those documents which were in fact relevant and properly discoverable in this action were produced.

Prior to an argument on plaintiff's objections, Respondent filed a Subpoena Duces Tecum for Deposition requesting plaintiff's agents to produce at deposition the same documentation which was originally requested and objected to in the Request for Production and Objection to Request for Production. The Subpoena for deposition was issued by Respondent on February 2, 1989 setting the deposition for February 8, 1989, six days later.

Plaintiff's counsel timely filed on April 3, 1989 a Motion

for Protective Order stating that the requested documentation as set out in the Subpoena Duces Tecum was identical to that requested and objected to in the defendant's Request for Production. Plaintiff additionally stated that the request for documents was not relevant to the underlying action. The Motion for Protective Order was set down for hearing on February 16, 1989.

In response, on February 15, 1989 Respondent filed a Motion by Defendant for Judgment, for Sanctions and Costs on Obdurate Refusal by plaintiffs to permit discovery alleging that:

a. Plaintiffs objected to the taking of the deposition with no valid reason other than as a delaying tactic.

b. That attorney for plaintiffs lacks the legal ability to understand what is transpiring or expects the Court to support her wrongdoing.

c. That the reason for plaintiff's attorneys deception to the Court is to generate fees.

d. That plaintiff's attorney is incompetent and unable to read and understand documents or is not qualified to conduct a deposition.

e. That plaintiffs and their attorney are engaged in collusion, fraud, deliberate delaying of the cause and an unwarranted refusal by plaintiffs to produce themselves for deposition.

Plaintiff's Motion for Protective Order was heard on February 16, 1989. At hearing, Judge Simons expressed his

concern about the competency of Respondent stating:

> "Because I have developed a certain mindset having nothing to do with this particular case but because of certain conversations concerning you (Respondent Broida) long before I had this case, I have developed a certain feeling about your competence and about your trustworthiness and other matters and your ability to properly function before the Court and it's really not fair for your clients for me to hear the matter, particularly now in view of the fact that I will refer this matter to The Florida Bar for an investigation in terms of whether there has been a breach of [the] Canons of Ethics by you or plaintiff's attorney in terms of the allegations of fraud. That being so, I don't think it is fair for me to hear the case any longer. I am going to recuse myself and refer the matter to The Florida Bar for such actions they feel appropriate and such actions made by the movant and see whether there is any violations of the Canons of Ethics by either attorney in this case."

In accordance with the above statements made by Judge Simons, he recused himself from presiding over the remainder of the case.

In the parallel case on the mortgage foreclosure, Judge Orr was also forced to recuse himself based on statements and allegations made by Respondent about a "special relationship" that existed between the Judge and plaintiff's counsel.

SUMMARY OF THE ARGUMENT

A Referee's Findings of Fact and Recommendations as to Guilt come to this Court with a presumption of correctness and should be upheld unless clearly erroneous or without support in the record. Florida Bar v. Vannier, 498 So.2d 896 (Fla. 1986).

ARGUMENT

THERE HAS BEEN NO SHOWING THAT THE REFEREE'S FINDINGS ARE ERRONEOUS OR LACKING IN EVIDENTIARY SUPPORT.

The referee's findings of fact are clearly supported by the evidence. The Referee's Findings of Fact and Recommendations as to Guilt shall be upheld unless they are clearly erroneous or without support in the evidence. The Florida Bar v. Vannier, 498 So.2d 896 (Fla. 1986); The Florida Bar v. Hirsch, 359 So.2d 856 (Fla. 1978).

It appears from the pleading (which she has labled Initial Brief on Appeal) submitted by Respondent that she feels that the Referee's findings of fact are erroneous. It is unclear however, as to what basis Respondent has for this belief in that what appears to be her "Initial Brief on Appeal" is no more than (as Judge Simons stated in the underlying civil litigation) a "rambling discourse of narration."

Respondent's assertions of collusion and bias on the part of all persons even remotely involved in these Bar disciplinary proceedings is without merit. It is abundantly clear that the Referee's findings were based on clear and convincing evidence

that Respondent engaged in the violative conduct as charged by The Florida Bar in the respective Complaints.

As such, there is no cause to disturb the Referee's findings of fact or recommendations as to guilt.

CONCLUSION

Wherefore, The Florida Bar respectfully requests this Honorable Court to affirm the Findings of Fact and Recommendations of Guilt as found by the Referee.

Respectfully submitted,

WARREN JAY STAMM
Bar Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of Answer Brief of The Florida Bar were mailed to Sid J. White, Clerk, Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32399-1927, and copies were served by U. S. Mail upon Edith Broida at Post Office Box 390751, Miami Beach, Florida 33119, John T. Berry, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, and Edward R. Blúmberg, Esquire, Designated Reviewer, New World Tower, Suite 2802, 100 N. Biscayne Boulevard, Miami, Florida 33132 this 2nd day of August, 1990.

WARREN JAY STAMM
Bar Counsel
Florida Bar No. 582440
Suite M-100, Rivergate Plaza
444 Brickell Avenue
Miami, Florida 33131
(305) 377-4445