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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

GRANVILLE H. CRABTREE,

Respondent.

_____/

Case No.: 75,119
TFB No. 88-10,904 (12c)

RESPONDENT'S REPLY BRIEF

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SYMBOLS AND REFERENCES

The Petitioner, The Florida Bar will be referred to in this Brief as "The Florida Bar" or the "Bar." The Respondent, Granville H. Crabtree will be referred to as "The Respondent."

The Appellant will use the following abbreviations:

"TR.I" refers to the transcript of the Final Hearing held on November 1, 1990. "TR.II" refers to the transcript of the Final Hearing held on November 2, 1990. "TR.III" refers to volume I of the transcript of the Final Hearing held on November 9, 1990. "TR.IV" refers to volume II of the transcript of the Final Hearing held on November 9, 1990. "R" will refer to the record in this cause.

STATEMENT OF THE FACTS

Petitioner's STATEMENT OF THE FACTS is not a statement of all the facts in the record and, in some instances, it is not accurate.

Admittedly, the Respondent was employed by Mrs. VanAntwerp to repatriate from Europe one and-a-half million dollars without in any way disclosing the source of the repatriated funds. (Petitioner's Brief-p.1) This was the sole purpose of his employment by her and he was allowed to utilize fully his own discretion in carrying out his assignment. (Petitioner's Brief-p.1) He was not employed by her to invest her moneys or perform any other service. On the other hand, he was not employed by Mr. Prine as a lawyer to do anything. He and Mr. Prine went into a joint venture together and in so doing, Mr. Prine was not seeking and never requested any legal advise relative thereto. These facts are undisputed and must be borne in mind at all times in order to fully understand the facts of this case.

The factual situation herein is extremely complicated. Of necessity, the Respondent had to disguise the source of the repatriated funds. The facts are designedly similar to a jigsaw puzzle. No single piece of the puzzle or even a large number of pieces, less than all, discloses the real picture. To fully comprehend the substance of the puzzle, it must first be completed. To fully comprehend the facts in this case, all of the facts must be in place. As a result of the foregoing, the following parts of the puzzle are completely missing from Petitioner's Statement of the Facts and its entire Brief:

1. It was decided that in order to repatriate the one and-a-half million dollars, it was necessary to create a legitimate business venture into which Mrs. VanAntwerp could infuse said repatriated funds and later extricate them. (TR.IV-p.21) To accomplish this, Mrs. VanAntwerp borrowed $400,000.00 from a local bank and invested it directly in the Orange Grove joint venture in exchange for one-third of all of the profits earned by the joint venture after the refund of her $400,000.00 investment. There was nothing secretive about this investment because she could account for the source of the $400,000.00; if she made a profit on the venture, she could show it on her income tax returns, and attribute it to the $400,000.00 investment.

2. Mrs. VanAntwerp could not be the visible investor of the repatriated one and-a-half million dollars invested in the joint venture because in so doing, the source of the money would be readily ascertainable. For this reason, it was necessary to create a fictitious investor of said funds, "the European investors." Inasmuch as Respondent represented Mrs. VanAntwerp and was connected with the original joint venture, he created Jerry Reed as a figurehead agent for "the European investors" for the purpose of insulating himself, personally, from "the European investors." (TR.IV-p.38-39)

3. It was necessary that it appear that the investment of the one and-a-half million dollars by "the European investor" was the result of plausible business transactions and that the same be documented. (TR.IV-p.38) It was this that explains the documents

relative thereto which The Bar in its Brief describes as "sham" and "bogus." They were sham and bogus because in reality there were no business transactions, and their purpose was to mislead or deceive strangers to the transactions. (TR.IV-p.38)

Exhibit 6 is a letter from Respondent to Mrs. VanAntwerp which shows a copy to Mr. Prine. This letter documents supposed efforts of Respondent to find investors and points out that the Reed Group was probably the best source of funds. The Reed Group, of course, consisted of Jerry Reed and there were no negotiations between Crabtree and Reed.

Bar Exhibit 8 is a letter dated January 26, 1981 prepared by Crabtree and appearing to be from Jerry Reed to him. This letter has the appearance of being a tentative agreement between "the European investors" represented by Reed to invest one and-a-half million dollars into the joint venture in exchange for a percentage of the profits to be derived therefrom. There was no such tentative agreement.

Bar Exhibit 7 is a letter from Respondent to Prine dated January 27 enclosing Bar Exhibit 8, the purpose of which appears to keep Prine advised of the supposed negotiations.

Bar Exhibit 9 is a letter from Crabtree to Reed which enclosed a supposedly proposed Joint Venture Agreement between Crabtree as Trustee and Reed as Trustee, which has the appearance of the consummation of the negotiations between Reed as agent for "the European investors" and Crabtree.

Bar Exhibit 11 is a copy of the supposed Joint Venture

Agreement between Respondent and Reed which appears to be the result of all of the foregoing negotiations. Under this "Agreement", "the European investors" invested one and-a-half million dollars into the joint venture and became entitled to one-half of the profits thereof. From this investment the joint venture paid Mrs. VanAntwerp's loan from the bank and the accrued interest thereon in the total amount of $416,547.93 (Bar Exhibit 33; TR.IV-p.31).

The uncontroverted and unquestioned testimony of Respondent reflects that Mrs. VanAntwerp wanted no profit out of her one and-a-half million dollar investment. (TR.I-p.101, 145, 146, 147, 148 and TR.IV-p.20, 21, 22, 50,52, 54). The reason given for this was that such a profit would focus attention on the investment, the true identity of the investor, and ultimately, the source of the funds. The joint venture filed joint venture income tax returns for years 1980, 1981, and 1982 with the Internal Revenue Service. (TR.IV-39,40,41,42 and Respondent's Exhibits 5, 6). These tax returns reflected the names of the joint venturers. If "the European investor was a co-venturer entitled to a portion of the profits, returns for 1982, and 1983 would have to reflect the name of the investor. As a result thereof, Mrs. VanAntwerp would, of necessity, have to have been shown as having an additional one-half interest in the joint venture which might well bring about the disclosure of the source of her additional capital investment, the one and-a-half million dollars. To avoid this, it was necessary to divest "the European investors" of all rights to profits and

interest out of the joint venture and to make the divestiture appear to be a plausible business transaction.

Respondent drafted, for the signature of Reed, Bar's Exhibit 15, being the letter of April 1, 1981 addressed to Respondent and signed by Reed. This letter appears to reflect that "European investors had changed their minds, they did not want to be co-venturers in the venture and they wanted a refund of their moneys.

On April 3, Respondent wrote Prine (Bar Exhibit 16) enclosing a copy of Bar Exhibit 15. This letter states that Bar Exhibit 15 was a "surprise" to Respondent. The statement that the "European investors" change of mind was a "surprise" was solely to give apparent credibility to the change in the relationship of "the European investor." (TR.IV-p.53)

Exhibit 17, 18, and 19 merely document the new relationship between the "European investor" and the joint venture whereby the joint venture "guaranteed" the reimbursement of the one and-a-half million dollars to the "European investor" solely out of the proceeds from the sale or development of the Orange Grove and the "European investors" waived all rights to any interest or profits from the joint venture. It will be noticed that there is no time limitation for reimbursing the "European investor."

As a result of all of the foregoing:

1. Mrs. VanAntwerp had infused her one and-a-half million dollars into the joint venture in a manner not readily apparent.

2. Mrs. VanAntwerp, Prine, and Respondent, as joint venturers, had the free use of the million and-a-half dollars.

3. The profits of the joint venture were payable only to Mrs. VanAntwerp, Prine, and Respondent in equal shares.

4. When the land was finally liquidated, no profit having been made on the $1,500,000.00 infused, the withdrawal of that sum from the joint venture by Mrs. VanAntwerp would not have to be reflected on her tax returns and any profit could be attributed to the $400,000.00 initially invested and it could be returned.

In short, all of the parties, Mrs. VanAntwerp, Prine, and Respondent had achieved their objectives and no one was hurt. They had succeeded in disguising the nature of the transaction. At this point, it must be pointed out that there is no evidence in the record, or even an intimation, that the purpose of repatriating the money so that no one would know the source was in any way illegal or calculated to injure anyone.

Just at the time the Orange Grove was purchased from Massey there was definitely a downturn in the real estate market (TR.II-p.51), and credit for acquisition and development loans had tightened up (TR.II-p.53), and the interest rates on such loans had risen to between 17 and 21% (TR.II-p.53).

After the acquisition of the Orange Grove from Massey, Respondent had tried to secure acquisition and development loans, but because of the downturn in the economy, it was impossible to secure the same. (TR.IV-p.55). Although Respondent had not put the property on the market, he had "nosed around" in an effort to sell it, but there wasn't a market for it at that time unless the venture wanted to take a big loss. (TR.IV-p.55, 56).

In its Statement of the Facts, The Bar states "In early 1982, the Respondent approached Neil Saunders, a client and business partner. (R4-p.4, lines 1-25; p.5, lines 1-2) in regard to whether or not Mr. Saunders would be interested in purchasing the Orange Grove property." A fair evaluation of Mr. Saunders testimony as cited reflects that between 1975 and 1980 Respondent may have handled some real estate closings wherein Saunders was involved. There is nothing in the record reflecting that Respondent represented Saunders subsequent to 1980 in any matters. Respondent testified that he had never represented Saunders. (TR.I-p.156). Saunders later testified that he was not a business associate of Respondent but he had bought from and sold to Saunders a small number of parcels of property. (R4-p. 11, 12)

An evaluation of Saunders testimony (R4-p. 6-9, and 15) reflects that Saunders, when he purchased the Orange Grove, had several prospective investors in mind with one or more of whom he intended to form a joint venture for the purpose of developing and marketing the Orange Grove property, among whom was Sigmund Levy and Varoom Corp. Saunders would acquire the title to property that he believed would be good subject matter for a joint venture, tie the property up for a period of time and offer it to his prospects. At the time Saunders agreed to buy and bought the Orange Grove property, he had no agreement with Respondent whereby Respondent would retain any interest in the property and he had no intention of entering into such an agreement. (R4-p.36) Respondent testified that he retained no interest in the Orange Grove after

the sale to Mr. Saunders (TR.IV-p.59). There is no evidence in the record that Respondent retained any interest in the Orange Grove after its sale to Saunders, except for the mortgage lien in the amount of $950,000.00 which Respondent held as Trustee for Mrs. VanAntwerp.

Saunders contracted to buy the property for $1,800,000.00 payable $850,000.00 in cash and the balance of the purchase price, $950,000.00, to be secured by a second mortgage on the property to be held by the Respondent. The cash was raised by Saunders borrowing $950,000.00 from Horizon Mortgage secured by a first mortgage on the Orange Grove. Saunders was not personally liable on either of the notes and mortgages. (Bar Exhibits 22, 23, 25).

Respondent sold the Orange Grove to Saunders on the terms above set out for the reason that he believed Saunders to be an active, successful, known realtor. Respondent believed him to be able to move the project along and it would be better to have Saunders move it along than allow it to sit in a stagnant economy and lose money. (TR.IV-p.88) There was no way to sell it for all cash and, to salvage the situation the property had to be sold. (TR.I-p.160, 161).

Out of the proceeds of the sale to Saunders, Mrs. VanAntwerp received $602,559.00 as partial reimbursement of her $1,500,000.00 (Bar Exhibit 33; TR.IV-p.31).

Prine agreed to the sale to Saunders. Prine testified that he did so upon Respondent's assurance that he would have no further interest in the property after the sale except maybe as an

attorney. It is immaterial whether Respondent made this representation to Prine because after the sale to Saunders, Respondent had no interest in the property except as a holder of the $950,000.00 mortgage lien as Trustee for Mrs. VanAntwerp until in an effort to salvage this lien, the Winthrope Group acquired title in May, 1983, a year later. Further, Saunders knew from the closing statement of the sale to Saunders (Bar Exhibit 21) that there was a $950,000.00 mortgage from Saunders to the sellers. He knew that the mortgage was not payable to him so it had to be payable to either Respondent or Respondent's client, Mrs. VanAntwerp.

After Saunders purchased the property, Mr. Levy failed to materialize as a co-venturer therein (R4-p.15, 23; TR.IV-p.67, 68) and Saunders advised Respondent that he was not going through with the project (TR.IV-p.64, 65). Saunders suggested that Respondent become re-involved inasmuch as he, as Trustee for Mrs. VanAntwerp, held the second mortgage on the property subject to Horizon's first mortgage. Respondent believed that in order to protect Mrs. VanAntwerp's second mortgage, he had to become re-involved in the property (TR.IV-p.66, 67).

By letter dated August 12, 1982 from Respondent to Prine, Respondent advised Prine that Saunders was having difficulty with the Orange Grove property and probably wanted to sell it. He further told Prine that he was vitally interested in salvaging the $950,000.00 mortgage. He suggested to Prine that if he, Prine, had any interest in acquiring the property, he should contact Saunders

in relation thereto. (TR.IV-p.65, 66, 67; R7). Prine never responded to the letter. (TR.IV-p.65).

In late fall of 1982 or early winter of 1983, Respondent, because of his concern about the $950,000.00 second mortgage, decided that he, together with his partner Sanchez, and Saunders, would seek mortgage money in an amount sufficient at least to pay and satisfy the first and the second mortgage. (TR.IV-p.67, 68). It was determined to use the Winthrope Group, a shelf corporation in Respondent's office, as the entity to accomplish this refinancing. (TR.IV-p.70). On February 5, 1983, a letter was written to Mr. Fetters, a mortgage broker in St. Petersburg, seeking a mortgage loan for the acquisition and development of the Orange Grove in the amount of $4,300,000.00. (TR.IV-p. 70-73; R8). Fetters obtained an acquisition and development loan from State Savings Bank of Lubbock, Texas in the amount of $4,300,000.00. On May 4, 1983, Saunders conveyed the Orange Grove to the Winthrope Group and on May 5, 1983, the Winthrope Group executed and delivered to State Savings and Loan Association of Lubbock its mortgage note in the amount of $4,300,000.00 secured by a mortgage encumbering the Orange Grove. From the proceeds of this loan from State Savings and Loan Association of Lubbock, Texas completed the reimbursement of Mrs. VanAntwerp for her $1,500,000.00, said reimbursement being made between May 20, 1983 and July 29, 1983.

On page 1 of its Brief, The Bar states, "Mrs. VanAntwerp never asked the Respondent to conceal the fact that the repatriated funds belonged to her." This statement is contradictory to a prior

statement on said page which is to the effect, "In early 1980, Marjorie VanAntwerp, a client and friend of Respondent, had a discussion with Respondent in regard to repatriating some, but not all, of her European funds into the United States in a manner which would conceal the fact that the funds came from Europe." It is obvious that if Respondent did not conceal the fact that the repatriated funds infused into the joint venture ($1,500,000.00) belonged to Mrs. VanAntwerp he could not conceal the fact that the funds came from Europe. Further, the testimony cited for this fact (TR.III-p.28, lines 22-25) merely reflects that she "had no concern as to anybody knowing that you were an investor in this Orange Grove property." There were two investments in the Orange Grove property; the initial $400,000.00 and the subsequent $1,500,000.00. It was necessary that the initial investment be open and notorious.

On page 3 of Petitioner's Brief, it is stated that Mrs. VanAntwerp was unaware of the Respondent's ownership interest in the joint venture. Respondent's letter to Mrs. VanAntwerp of August 18, 1980 (Bar's Exhibit 2), reflects that, "Mr. Prine agrees that he will participate in this along with you and myself by being a one-third interest owner of the property." The letter of January 23, 1981 to Mrs. VanAntwerp from Respondent (Bar's Exhibit 6), reflects that the "European investor" would then have a 50% interest in the property along with the three of us, to wit, you, Mr. Prine, and myself." Respondent testified that he delivered both of said letters to Mrs. VanAntwerp. She did not recollect receiving them, but did not deny that she did so.

On page 4 of its Brief, Petitioner states that Prine "did not recall being advised that Mrs. VanAntwerp would be the investor." However, Exhibit 6, the letter of January 23, 1981 to Mrs. VanAntwerp, reflects a carbon copy to Mr. Prine and Respondent testified that he mailed the same. Exhibit 12, the letter of February 12, 1981 from Respondent to Mrs. VanAntwerp, shows a carbon copy to Mr. Prine. Respondent testified that he mailed the same. Exhibit 13, the letter dated February 23, 1981 from Respondent to Prine, reflects that the Orange Grove was in the name of Respondent as Trustee "for the benefit of you, Mrs. VanAntwerp, and myself as to one-third owners of one-half interest....." Respondent testified he mailed said letter to Prine. It is true that Prine did not recall receiving these exhibits, but he did not deny that he had received the same. Further, the joint venture filed tax returns for 1980, 1981, and 1982 (TR.IV-p. 39, 40, 41, 42, 46; R5, 6). Prine was sent copies and both Prine and VanAntwerp needed the K-1's to file their tax returns.

In page 5 in its Brief, The Bar states "After the Orange Grove property was acquired, the Respondent engaged in a scheme to "freeze out" Robert Prine in regard to the joint venture." However, Respondent does not state any facts leading to this conclusion. The "sham" and "bogus" correspondence and the transactions between Respondent and Reed did not in any way lead to a "freeze out" of Prine; they merely solidified his position by furnishing the venture, interest free, one and-a-half million dollars without putting any limitation as to when said money had

to be reimbursed. The only possible inference of The Bar's Brief is that the sale to Saunders was not a bona fide sale of the Orange Grove and that the Respondent retained some interest therein which was later utilized through the Winthrope Group. There is no evidence in the record to support this inference. The testimony of Saunders, a disinterested witness, completely refutes it.

On page 15 of the Petitioner's Brief it is stated that "On September 28, 1984, Mrs. VanAntwerp invested $649,025.00 into the Orange Grove project." This is an accurate statement. The Bar does not contend, at least in its Brief, that Respondent in any way influenced or induced Mrs. VanAntwerp to make this investment, and the record is clear that he did not do so. (TR.III-p.13)

On page 21 of its Brief, The Bar states that Mrs. VanAntwerp "lost interest on approximately 2.5 million dollars over a three and-a-half year period of time...." The two and-a-half million figure was arrived at by adding the initial $400,000.00, the repatriated $1,500,000.00, and the money subsequently invested in the Winthrope Group of approximately $649,000.00, and the three and-a-half year period runs from December 1980, the time of the initial investment, to June, 1984. The initial investment of $400,000.00, <u>together with all accrued interest thereon</u> payable to the bank was reimbursed in February, 1981. The one and-a-half million repatriated funds was partially reimbursed by the payment of $602,559.00 in May of 1982 from the proceeds of the Saunders sale. Mrs. VanAntwerp received no interest on the one and-a-half million dollars for one year and three months. The balance of the

million and-a-half after the reimbursement of the $602,559.00 was evidenced by Saunders promissory note secured by the second mortgage in the amount of $950,000.00. The principal amount of the mortgage and all accrued interest was completely paid and satisfied by the payment of $1,072,073.71 between May 20, 1983 and July 29, 1983. Thus, in reality, Mrs. VanAntwerp failed to receive interest only on a million and-a-half dollars for one year and three months.

In its Statement of the Facts, The Bar placed great emphasis on the fees and other remuneration received by the Respondent during the course of the transactions here involved. It must be remembered that the investment of Mrs. VanAntwerp's funds in the Orange Grove project was solely for the purpose of repatriating her funds in a surreptitous manner -- she wanted no profits. The income tax forms reflected that she, Mr. Prine, and Respondent each had an undivided one-thrd interest in the joint venture. After deducting all fees, commissions, and other charges, there was still a profit of $200,000.00 which had to be divided equally between the joint venturers. It was for this reason that neither Mrs. VanAntwerp nor Mr. Prine objected to the fees and charges of Respondent.

ARGUMENT

Respondent stands on the argument in his Initial Brief. Therein, Respondent set out the facts as reflected by the evidence in the record. The Bar's Answer Brief as well as the Referee's Report are based on suspicion, conjecture, and inferences not supported by the evidence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail this 30th day of May, 1991, to:

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