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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant-Appellee and Cross-Appellant,

v.

BARBARA L. WOLF,

Respondent-Appellant.
_____/

Supreme Court No. 76,797

The Florida Bar No. 89-52,623 (17D)

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BAR'S REPLY BRIEF UPON CROSS-PETITION FOR REVIEW

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ARGUMENT

The bar has certainly, as appellant seems to criticize, honed her defalcations with needle sharpness. Of that, there can be no doubt. Appellant's misappropriations are evidenced by documentation which cannot be disputed. Her misrepresentations and perjury, **like** her theft of client and land trust beneficiary funds, are evidenced by documentation incapable of misinterpretation or disputation. It is obvious that it is due to the absolute nature of her misconduct that appellant has chosen, in **her** initial brief and with one exception, in her reply brief, to avoid any and all discussion of her misconduct.

Having finally ventured into the specifics of the Holbrook Estate, her thefts therefrom and her perjury to the probate court therein, appellant urges that "she either **had *just* been** to or was on her way to the bank with a deposit to ensure that this accounting was accurate" (appellant's reply brief, page 2). This argument is misleading and inaccurate. It is misleading because even had appellant engaged in **a** restitution foot race **and** deposited all sums necessary to render the arithmetic of her account correct, such deposit would hardly have **cured** the deliberate concealment and misrepresentations appearing in the account regarding the taking by appellant of $13,900.00 and her use of such funds for her personal use and other purposes. It is inaccurate because on the date of her filing her account, February **7, 1985** (Tr. page **230),** appellant had an estate account balance of only **$1,530.99**

against a liability of $8,359.87 as evidenced by the estate account statements and the account itself received in evidence, respectively, as appellants exhibits 1 and 2 and the bar's exhibit 1. Of much greater significance, however, even those deposits that appellant did make to the Holbrook estate account in order to make distribution, consisted, in part of moneys stolen from land trusts and hidden from the beneficiaries of such land trusts in the exact same fashion as her estate misappropriations were hidden from the court and all parties to the estate.

Appellant also urges that because the bar condemned her for totally ignoring her trust account responsibilities that some type of election of remedies has taken place which excuses appellant's thefts and misrepresentations; that somehow the charges are mutually exclusive. Such is hardly the case. When appellant, under penalty of perjury, swore to the probate court that two (2) checks that she had paid to herself totalling $13,500.00 were not issued but were "void," she knew precisely what she was doing. Her misrepresentations had absolutely nothing at all to do with her knowledge or lack of knowledge of her client trust account status. When appellant induced numerous land trust beneficiaries to execute releases to her against accounts rendered to such beneficiaries from which appellant deliberately omitted receipts of income which she diverted to her own uses, her actions and misrepresentations had absolutely nothing to do with her knowledge or lack of knowledge regarding her client trust fund. When appellant, a sophisticated tax attorney, with a masters degree in taxation (Tr. page 67) deliberately took $3,300.00 from her client, Nemetz, and deposited

such sum to her client trust account, it is respectfully submitted that she knew full well that such sum was exactly and precisely what she needed in order to avoid bouncing the five (5) checks she immediately issued in virtually the identical amount (See page 13 of the bar's initial brief for a listing of the details concerning such misappropriation). When this same attorney left $1,000.00 in her client trust account from the $13,500.00 she had stolen from the Holbrook Estate and removed the rest for her own use, it is obvious that she knew full well that such $1,000.00 was necessary in order to avoid bouncing the check issued to Klingerman (See page 11 of the bar's initial brief for details of this transaction).

Appellant's attempt to portray herself as a confused victim with "blurred awareness" demonstrates the same lack of candor commented upon by the referee. Her suggestion that the bar, with knowledge of the serious charges embraced in this proceeding, delayed the prosecution thereof is equally groundless, When asked when he discovered the Holbrook and other misappropriations, the bar's auditor testified that it was upon the second audit (Tr, pages 285, 288-289).

Appellant exacerbates her lack of candor with the assertion that the referee rejected the bar's proffer "[A]fter examining these proffered documents" (appellant's reply brief at page 3). In the first instance, the bar, believing it to constitute an impropriety to furnish to the referee, as both trier of fact and law, the proffered documents prior to a hearing lest some type of ex parte communication result, did not append such documents to its application for past hearing relief. Upon the rehearing, while the referee expressly permitted the proffer,

he neither reviewed nor examined the documents proffered having stated at the outset of the hearing that he had no intention, whatever, to grant the bar's application for rehearing. As the referee stated: "I'm not aware of what is in the documentation. . ." (Tr. March 13, 1992 hearing).

The scenario presented by the evidence is quite simple, As a result of a complaint to the bar, an audit was conducted revealing that appellant's client trust account was an unmitigated mess. The auditor found, that in addition to a host of technical violations, appellant had commingled several land trust accounts with her regular client trust fund. None of the thefts alleged in the bar's complaint were then discovered. As a result of the lack of record keeping and trust account procedures non-compliance, appellant agreed to a public reprimand and reserved to the bar carte blanche to pursue whatever additional violations it might find. In an attempt to assuage the bar's concern, appellant offered to secure releases from all land trust beneficiaries. She secured some, but others commenced suit. At her attorney's behest and upon appellant's executing a waiver of laches, the bar agreed to hold its investigation in abeyance pending a resolution of the litigation. When the litigation concluded with appellant paying sums to the land trust beneficiaries who sued her, the bar reactivated its investigation, discovered the Holbrook and other matters and pursued appellant in this proceeding. Every step taken was with appellant's knowledge, consent and/or waiver.

CONCLUSION

If there is any smoke from appellant's attempt to burn the bar's

proffered documentation (which totally rebuts appellant's so-called laches mitigation), such **smoke** is consumed by the conflagration of appellant's thefts of clients' funds, her misrepresentations to conceal such thefts and her restitution by additional thefts and concealment. Appellant has presented no mitigation of any type, nature or description which either cumulatively or alone has been recognized by the Court since its pronouncement in The Florida Bar v. Schiller, **537** So. 2d **992** (Fla. 1989) **as** constituting mitigation to warrant imposition of a sanction less than disbarment.

Appellant should **be** disbarred.

All of which is respectfully submitted.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of **the** foregoing reply brief has been furnished to F. **Lee** Bailey, Attorney for Appellant, by **U.S.** mail addressed to **1400** Centrepark Boulevard, Suite 909, West Palm Beach, Florida **33401** this 7th day of July, 1992.

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