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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,
v.

Supreme Court
Case No. 76,863

NORMAN F. SOLOMON,

Respondent.
_____ /

In Support of the Referee's
Report in a Disciplinary
Proceeding.

BRIEF OF COMPLAINANT

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INTRODUCTION

In this brief, The Florida Bar will be referred to as either "THE FLORIDA BAR", "THE BAR", or "Complainant"; NORMAN F. SOLOMON will be referred to as the "Respondent" or "Solomon"; Carlos J. Ruga will be referred to as "Staff Auditor"; Greenleaf Realty Corporation bank account will be referred to as "realty account", and law office of attorney A. John Goshgarian will be referred to as "the office" or "law firm". Other parties will be referred to by their respective names or surnames for clarity.

Abbreviations utilized in this brief are as follows:

"Tr." refers to the Transcript of Proceedings before the Referee held April 18, 1991.

"RR" refers to the Report of Referee.

STATEMENT OF THE CASE

This disciplinary proceeding commenced on November 6, 1990 with the filing of a two-count Complaint against Respondent.

By letter dated January 10, 1991, the Supreme Court forwarded to the Referee an order of assignment as referee, the pleadings and Respondent's Motion to Dismiss.

On January 17, 1991, The Florida Bar filed a Motion for Order Deeming Matters Admitted based upon Respondent's failure to file any response to The Florida Bar's Request for Admissions.

On January 25, 1991 a hearing was held before the Referee on Respondent's Motion to Dismiss and Complainant's Motion for Order Deeming Matters Admitted. At that hearing the referee denied Respondent's Motion to Dismiss and granted Complainant's Motion for Order Deeming Matters Admitted.

On January 25, 1991, the Referee issued an order deeming matters admitted. On February 11, 1991, the Referee issued an order on the motion to dismiss. On March 13, 1991 Respondent filed a notice with the Supreme Court appealing these orders. The Court acknowledged receipt of Respondent's Notice of Appeal but advised that Respondent's appeal of non-final orders would not be entertained.

The final hearing before the Referee was held on April 18, 1991. At the conclusion of the hearing, the Referee directed each

party to submit a proposed Report of Referee.

On May 2, 1991, The Florida Bar forwarded to the Referee and Respondent a proposed Report of Referee, together with a Statement of Costs. Respondent did not submit a proposed Report of Referee.

On May 29, 1991, the Referee held a hearing on costs and the Referee's report at which time Respondent was afforded an opportunity to argue his objections to the proposed report and costs.

On May 30, 1991 The Florida Bar forwarded to the Referee for filing in this cause a copy of the subpoena, with return of service, pursuant to which The Florida Bar obtained Respondent's bank records which are the subject of Count I of this proceeding.

The Referee's recommendation of disbarment was considered by the Board of Governors of The Florida Bar in conjunction with Respondent's resignation petition (Supreme Court Case No. 77,774) at their meeting which ended May 31, 1991. By letter dated June 4, 1991, Respondent was notified that the Board would not file a petition for review and that Respondent had until June 17, 1991 to file a petition. This date was later corrected to June 28, 1991 in correspondence sent by The Florida Bar to the Court and Respondent which explained the method for computing the time for review.

On June 27, 1991 Respondent served a Petition for Review of the Referee's Report. Respondent did not file a brief in support

of his petition. On August 16, 1991 The Florida Bar served a Motion to Dismiss Appeal based upon Respondent's failure to file a brief. Thereafter, Respondent submitted a Motion for Extension of Time to File Brief which certified a mailing date of August 13, 1991 but was postmarked August 22, 1991.

By order dated September 5, 1991 the Supreme Court denied both The Florida Bar's Motion to Dismiss Appeal and Respondent's Motion for an Extension of Time to Serve Respondent's Brief. In the same order, the Court directed Complainant to serve a brief on or before September 25, 1991. The Court did not specify any particular issue as the subject of the brief. The Florida Bar assumes, therefore, that the issue is the Referee's recommendation of disbarment as the appropriate disciplinary sanction and submits the instant brief in support thereof.

STATEMENT OF THE FACTS

The Complaint filed by The Florida Bar against Respondent involves two counts.

Count I is based upon Respondent's actions of tendering a worthless check in the amount of ONE THOUSAND THREE HUNDRED EIGHTY-THREE DOLLARS AND SEVENTY CENTS (\$1,383.70) to purchase jewelry. The check was issued by Respondent from the bank account of Greenleaf Realty Corporation. Respondent is President of Greenleaf Realty Corporation and sole signatory on the account. Respondent's actions became the basis of an audit by The Florida Bar Staff Auditor. The audit reflected that the realty account was overdrawn on one hundred and seventeen (117) occasions during the one-year period of review, that there were several instances of dishonored checks and that the realty account was used by Respondent in a checkkiting scheme involving the bank account of a law firm which contained client funds.

The Florida Bar maintained that Respondent's actions described in Count I of the Complaint constitutes a violation of Rule 3-4.3 of the Rules of Discipline (commission of an act which is unlawful or contrary to honesty and justice) and Rule 4-8.4(b) (criminal act that adversely reflects on the lawyer's honesty, trust worthiness or fitness as a lawyer in other respects) and Rules 4-8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation)

of the Rules of Professional Conduct.

Count II of the Complaint is based upon Respondent's actions of forging the signature of his deceased parents on Homestead Tax Exemption Applications and filing the forged applications. The Florida Bar maintained that the forgery and the giving of false information to claim an exemption constitutes conduct involving dishonesty, fraud, deceit or misrepresentation and adversely reflects on fitness to practice law in violation of Disciplinary Rule 1-102(A)(4) of the Code of Professional Responsibility.

Because the facts and disciplinary rule violations were deemed admitted, The Florida Bar did not offer testimony or evidence at final hearing to establish the facts or disciplinary rule violations set forth in the Complaint. At final hearing The Florida Bar presented testimony and argument to establish the aggravating factors pertaining to the checkkiting and improper banking practices referenced in Count I, to wit: that the checkkiting activities involved Respondent's realty account and the account of the law firm where Respondent was employed as office manager and that funds belonging to law firm clients were deposited by Respondent directly into the realty account.

The Staff Auditor testified that fourteen (14) checks were issued by Respondent which were dishonored because of insufficient funds (Tr. 21) and that on at least three (3) occasions funds

belonging to clients of the law firm were deposited directly into Respondent's realty account (Tr. 23). These checks included a disability check (Tr. 23) and an insurance draft (Tr. 24). At the time of deposit, Respondent's account was overdrawn (Tr. 24, 25). The Staff Auditor testified that the funds were used for other purposes but the checks were subsequently repaid (Tr. 23, 26).

In addition, the Staff Auditor testified concerning the use of Respondent's realty account as part of the checkkiting scheme with the law firm's account (Tr. 22) which held client funds (Tr. 23 - 27) and that he found other evidence suggestive of checkkiting involving Respondent's realty account and the account of another business entity of which Respondent was a signatory (Tr. 27, 29-30, 32).

Respondent testified at the final hearing that there were no unpaid checks (Tr. 34). Respondent acknowledged that the worthless check to purchase jewelry was issued on January 3, 1988 and was repaid in installments, beginning in September 1988 (Tr. 36-37). Respondent explained that he overspent his budget (Tr. 52). Respondent testified that he was the office manager for a law firm (Tr. 40) and that he had received funds of law firm clients (Tr. 35, 38) which he deposited into his realty account to obtain cashiers checks (Tr. 35). Respondent claimed that he did this because the clients needed cashier's checks and he had the

"facility to get the checks without any problem" (Tr. 35). Respondent later claimed that he had deposited the check received for a client, Worsley, into his realty account and held it at the client's request (Tr. 38). Respondent admitted that he repaid the client with a realty account check (Tr. 38) and not a cashier's check.

In addition, at final hearing The Florida Bar argued that in determining appropriate discipline consideration should be given to the cumulative nature of the misconduct as well as Respondent's prior disciplinary record which consists of private reprimands (1970 and 1974) and suspension (1976 and 1982). Moreover, The Florida Bar maintained that Respondent's improper banking activities specifically involved the handling of client funds which is itself improper in that it constitutes a violation of Respondent's obligations as a suspended attorney to refrain from client contact and handling trust funds pursuant to Rule 3-6.1(c) of the Rules of Discipline.

SUMMARY OF THE ARGUMENT

Having received two (2) private reprimands and two (2) suspensions, this is the fifth time Respondent has been the subject of Bar disciplinary proceedings. The instant case involves misconduct of a serious and cumulative nature which specifically includes issuing worthless checks, checkkiting and forgery. Respondent's unfitness to practice law is, therefore, clearly established and the referee's recommendation for disbarment should be approved.

ARGUMENT

A REFEREE'S RECOMMENDATION FOR DISBARMENT SHOULD BE APPROVED WHERE A RESPONDENT WITH A HISTORY OF PRIOR DISCIPLINE ENGAGES IN MISCONDUCT OF A SERIOUS AND CUMULATIVE NATURE.

This Court has recognized that in rendering discipline consideration is given to previous disciplinary history and discipline is increased where appropriate. The Florida Bar v. Bern, 425 So.2d 526 (Fla. 1983), The Florida Bar v. Solomon, 338 So.2d 818 (Fla. 1976). Furthermore, this Court deals more harshly with respondents who have engaged in cumulative misconduct rather than isolated instances. The Florida Bar v. Vernell, 374 So.2d 473 (Fla. 1979). Moreover, prior discipline, a pattern of misconduct, multiple offenses and dishonest motives are recognized by Florida's Standards for Imposing Lawyer Sanctions as aggravating circumstances to justify an increase in the degree of discipline to be imposed. Standard 9.22 (a), (b), (c) and (d), Florida's Standards for Imposing Lawyer Sanctions. All of these circumstances are present in the instant case.

Respondent began his disciplinary career with The Florida Bar in 1970 with a private reprimand which was followed in 1974 by a second private reprimand in a different matter. The Florida Bar v.

Solomon, 338 So.2d 818, 819 at fn. 1 (Fla. 1976).¹ In 1976 Respondent received the first of two (2) suspensions from the practice of law. The first was for six (6) months based upon a misdemeanor conviction for failing to file an income tax return. The Florida Bar v. Solomon, 338 So.2d 818 (Fla. 1976). The second was for a period of three (3) years commencing on the date a guilty plea was entered for failure to prosecute matters for a client. The Florida Bar v. Solomon, 409 So.2d 1052 (Fla. 1982). Respondent has remained suspended since 1976.

The misconduct which is the subject of Count I of the instant complaint occurred during the period of Respondent's suspension when he was employed as the office manager for a law firm (Tr. 40, 41). At the same time, Respondent was President of Greenleaf Realty Corporation and the signatory on a banking account in the name of Greenleaf Realty Corporation (RR 2, Tr. 21). In January 1988 Respondent issued a check from the realty account, made payable to Oriental Treasures, in the amount of ONE THOUSAND THREE HUNDRED EIGHTY-THREE DOLLARS AND SEVENTY CENTS (\$1,383.70) to purchase jewelry (Tr. 21, 52). This check was one of fourteen (14) worthless realty account checks issued by Respondent between

¹In 1967 Respondent was suspended from practice before the United States District Court for the Southern District of Florida for 'willful interference with the administration of justice'. Id.

January and April 1988 (Tr. 21).

The issuance of a worthless check is unethical and subjects an attorney to disciplinary sanctions. The Florida Bar v. Davis, 361 So.2d 159 (Fla. 1978). The Florida Bar v. Mayo, 439 So.2d 888 (Fla. 1983). The issuance of fourteen (14) worthless checks by Respondent, therefore, constitutes cumulative misconduct evidencing a pattern of misconduct which adversely reflects on fitness to practice law.

Respondent's unfitness to practice is further established by the pattern of misconduct involving improper banking practices, specifically the use of the realty account as part of a checkkiting scheme with a law firm bank account (Tr. 23). The law firm account which was used by Respondent was a special account into which client funds were deposited (Tr. 23).

Client funds were further jeopardized by Respondent's actions of depositing client funds directly into the realty account (Tr. 23) and using these funds for other purposes (Tr. 23). The realty account into which client funds were deposited was, in fact, overdrawn on one hundred seventeen (117) occasions during the one (1) year period under review (RR 2). Respondent's misuse of client funds is not mitigated by the fact that the law firm clients did not suffer any financial loss. See The Florida Bar v. Breed, 378 So.2d 783 (Fla. 1979); The Florida Bar v. Diaz-Silveira, 557 So.2d

570 (Fla. 1990).

Further, Respondent's misconduct involving checkkiting with the law firm account and the depositing of client funds into his realty account necessarily involved the handling of client funds. The fact that Respondent handled any client funds or had any client contact during his suspension is itself a violation of Rule 3-6.1(c) of the Rules of Discipline which specifically prohibits such activities by a suspended attorney. The Florida Bar maintains that this misconduct was properly considered by the Referee in determining the appropriate discipline.

Like checkkiting, the misconduct which is the subject of Count II of the Complaint is yet another example of Respondent's dishonest nature. Between August 1979 and at least March 1989 Respondent resided at a cooperative apartment owned by his mother. Homestead Tax Exemption Renewal Applications were filed with the Dade County Property Appraiser's Office for this property. The 1985 application purports to bear the signature of Respondent's mother while the 1986 application purports to bear the signature of Respondent's father. Respondent's mother, however, died in 1979 and his father died in 1985. Respondent forged the name of his deceased parents on these applications. Respondent's actions of forgery and the giving of false information to claim Homestead Tax Exemption constitutes dishonesty, fraud, deceit or


misrepresentation as well as conduct that adversely reflects on fitness to practice law in violation of Disciplinary Rules 1-102(A)(4) & (6) of the Code of Professional Responsibility.

The Florida Bar maintains that Respondent's misconduct involving issuing worthless checks, checkkiting, misuse of funds and forgery is serious and justifies Respondent's disbarment without regard to aggravating factors. Therefore, when considering the serious nature of Respondent's misconduct in conjunction with the aggravating factors, it is clear that disbarment is the most appropriate disciplinary sanction.

CONCLUSION

Respondent has a solid history of prior discipline. Considering Respondent's prior disciplinary history together with the serious and cumulative nature of the misconduct which is the subject of the instant case, disbarment is clearly warranted. The Florida Bar, therefore, urges this Court to approve the referee's recommendation of discipline and enter an order disbarring Respondent.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of the Initial Brief of Complainant was sent by Airborne Express to Sid J. White, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida, 32399-1927, and that a true and correct copy was mailed Certified Mail (P 296 086 835) and regular mail to Norman F. Solomon, Respondent, at P.O. Box 1046, Miami, Florida 33137 this 25th day of September 1991.



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Bar Counsel