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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

LORETTA B. ANDERSON,

Respondent.

Case No. 77,269
TFB No. 91-10,887(13A)

INITIAL BRIEF

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SYMBOLS AND REFERENCES

In this Brief, the Appellee, Loretta B. Anderson, will be referred to as the "Respondent." The Appellant, The Florida Bar, will be referred to as "The Florida Bar" or "The Bar." "TR" will refer to the transcript of the Final Hearing held on June 25, 1991. "R" will refer to the record. "RR" will refer to the Report of Referee.

STATEMENT OF THE CASE AND FACTS

Respondent was employed as the Executive Assistant at the Tampa Housing Authority. One of her duties was to administer Resident Assisted Enterprises, a program to assist residents in becoming entrepreneurs. (TR 23, L. 4-7). On about October 2, 1989, Respondent forged signatures on two (2) Tampa Housing Authority checks and converted the money. (TR 36, L.6-7). Respondent sent the converted money to American Express as payment on her personal credit card debt. (RR 1; Complainant's Exhibit 4).

One of those checks was used to pay American Express on about December 29, 1989. (TR p.25, L.3-6; Complainant's Exhibit 5). On approximately November 16, 1989, Respondent converted to her own use, $1,600.00 worth of American Express Money Orders purchased by the Housing Authority and made payable to Williams and Warren for work on a consulting project. (TR p.37, L.17-18).

Those money orders were also used by Respondent for payment on her American Express account. Respondent had no authorization to use the money for her own purposes. (Complainant's Exhibit 6). The total amount converted to Respondent's own use was $4,500.00. (RR 2). When Respondent ceased to work with the Housing Authority, she turned her records over to a fellow employee. Turning over the records prompted her to make a partial reimbursement to the Housing Authority. (TR 38, L.20 - TR 39, L.4). The partial reimbursement of $3,500.00 was paid on or

about March 6, 1990. (TR p.39, L.16-17). On June 7, 1990, Respondent was charged with Uttering a Forged Check and with Grand Theft. (Complainant's Exhibit 1). On July 20, 1990, Respondent entered a plea of nolo contendere to three (3) counts of Grand Theft, a Third Degree felony. She received a withhold of adjudication, and was placed on probation for three (3) years. (Complainant's Exhibit 3; RR 2). She was also ordered to pay restitution and to pay court costs. (RR 2; Complainant's Exhibit 3).

The Final Hearing in the instant case was held on June 25, 1991. Respondent testified regarding the circumstances surrounding the thefts. She related that she was depressed at the time of the felonious conduct, and subsequently was admitted to Tampa General Hospital's psychiatric unit in February, 1990. (TR 26, p.8-12). She described the Tampa Housing Authority as the pit of corruption, and suggested working there was depressing. (TR 22, L.6). Additionally, Respondent noted that her superiors had advised that unexpended Housing Authority funds needed to be used so there would not be a reduced allocation for the next year's budget. (TR p.23, L.21-24).

The Honorable John S. Andrews, Referee, found Respondent guilty of violating the following Rules Regulating The Florida Bar: Rule

3-4.3 (unlawful acts); Rule 4-8.4(b) (commission of criminal acts); and Rule 4-8.4(c) (conduct involving dishonesty or fraud). He recommended a three (3) year suspension. (RR 2).

As mitigation, the Referee noted that Respondent is 48 years old, has been a member of The Florida Bar for fifteen (15) years without being disciplined or convicted, and that she is remorseful. (RR 4). He also found she had repaid $3,500.00 prior to criminal charges being filed. (RR 4). The Referee noted as mitigating that Respondent did not steal money entrusted to her in her role as an attorney. (RR 4).

The referee report in the instant case was served on August 8, 1991, and was considered at the Board of Governors meeting ending September 13, 1991. The Florida Bar filed a Petition for Review on September 23, 1990.

SUMMARY OF THE ARGUMENT

The appropriate discipline for an attorney who steals money from a governmental agency through forgery and conversion of money orders is disbarment. The fact that the attorney stole from a public agency while employed as a non-attorney, rather than stealing from a client to whom she was providing legal representation, does not reduce what would otherwise be a disbarment offense to a three (3) year suspension. Respondent's depression over personal problems is not sufficient to mitigate her offense from disbarment to suspension.

ARGUMENT

> ISSUE: WHETHER AN ATTORNEY GUILTY OF FORGERY AND CONVERSION SHOULD BE DISBARRED FOR THEFT FROM A GOVERNMENTAL AGENCY WHILE EMPLOYED IN A NON-ATTORNEY CAPACITY.

Respondent's forgery and embezzlement of money from the Tampa Housing Authority warrants disbarment. The fact that Respondent stole public funds from her employer rather than stealing from clients does not lessen the severity of her misconduct.

The Referee observed that Respondent's conduct does not rise to the level of disbarment, since the thefts were not a result of her practicing as an attorney, and did not involve client funds. Rather, the thefts were committed while she was an employee of the Tampa Housing Authority. The Referee specifically noted that the money was not entrusted to her in her capacity as an attorney. (RR 3). The Referee would have this Court adopt a position that it is less serious for a non-practicing attorney who is a government employee to steal public funds from the government than it is for an attorney to steal from a client. As Justice Ehrlich noted in dissent in The Florida Bar v. Gillin, 484 So.2d 1218, 1220 (Fla. 1986):

> "... stealing by a lawyer, whether from a client, a member of the general public or from his law firm, is utterly reprehensible, and...by such act the lawyer has forfeited his position in society as a member of the

> bar and an officer of the Court, and disbarment is the proper discipline."

Disbarment has been ordered for attorneys who stole from those with whom they had no attorney/client relationship. In The Florida Bar v. Bunch, 195 So.2d 558 (Fla. 1967), disbarment was ordered for an attorney who converted $55,000.00 in public funds while serving as Clerk of a Circuit Court; the money was repaid prior to the Final Hearing in the disciplinary action. Bunch also converted $4,500.00 belonging to a Bar Association while acting as its Secretary/Treasurer. That amount had not been restored at the time of the Final Hearing. Bunch pled nolo contendere to unlawful conversion and to willfully filing a false report to the Comptroller of the State. He was not adjudged guilty, but was placed on probation. The Referee noted that Bunch apparently had a fine record as a citizen, having been active in civic and church work, and recommended a five (5) year suspension. Like the Respondent in the instant case, Bunch was not engaged in the practice of law at the time of his thefts. Both Bunch and Respondent made partial restitution prior to the Final Hearing. The Florida Supreme Court ordered that Bunch be disbarred, and disbarment is the appropriate discipline for Respondent.

Another case in which an attorney was disbarred for a theft committed in a non-attorney capacity is The Florida Bar v. Bussey, 529 So.2d. 1112 (Fla. 1988). Mr. Bussey had engaged with

asociates in misappropriating over two million dollars from a bank for which he served as a fiduciary. In Bussey, The Bar analogized the theft from the bank to one in which an attorney misappropriates his or her client's funds. The Court agreed, stating:

> "an attorney who maintains a working relationship with a client and misappropriates the client's funds is guilty of a serious offense. ... The relationship between the Respondent and the bank was similar to that of attorney and client. An attorney is held to a high standard of trust. Like the attorney who misappropriates a client's funds, the Respondent in this case has abused his position of trust through his misconduct. It is not uncommon for this Court to disbar an attorney for misappropriating client trust funds. ... It is precisely this sort of conduct that tarnishes the reputation of attorneys in Florida. The respondent and his associates, by taking advantage of their positions of trust, have engaged in the type of conduct which damages the reputations of attorneys throughout the state. It is of no consequence that the respondent's conduct was not directly related to the practice of law. His conduct nevertheless reflects adversely on the practice of law and does irreparable harm to the public image of attorneys in this state. Indeed the public has been most vocal about the need for protection from dishonest lawyers. It is therefore without hesitation that we provide that protection." Id. at 114.

Along the same vein, in The Florida Bar v. Bennett, 276 So.2d 481, 482 (Fla. 1973), this Court stated:

> "Some may consider it unfortunate that attorneys can seldom cast off completely the mantle they enjoy in the profession and simply act with simple business acumen and not be held responsible under the high

> standards of our profession. It is not often, if ever, that this is the case. In a sense, "an attorney is an attorney, is an attorney, is an attorney", much as the military officer remains "an officer and a gentleman" at all times. ... the requirement of remaining above suspicion, as Caesar's wife, is a fact of life for attorneys. They must be on guard and act accordingly, to avoid tarnishing the professional image or damaging the public which may rely upon their professional standing."

Disbarment for theft of funds received in a capacity other than representing a client was also ordered in The Florida Bar v. Margadonna, 511 So.2d 985 (Fla. 1987). Margadonna was disbarred for using his official position as substitute temporary equity receiver to willfully and knowingly retain and convert approximately $145,000.00 to his own use. In Margadonna there were numerous mitigating factors, including gambling, alcoholism, psychiatric and health problems. Margadonna was disbarred even though it was recognized that the conversion was directly attributable to his gambling problem.

In the instant case, the Referee has noted as a mitigating factor that Respondent is remorseful. Also, the Respondent testified that the offenses occurred when she was depressed. In the overwhelming number of recent cases, this Court has disbarred attorneys for misappropriation of client trust funds notwithstanding the presence of mitigating factors. The Florida Bar v. Shanzer, 572 So.2d 1382 (Fla. 1991). Shanzer was

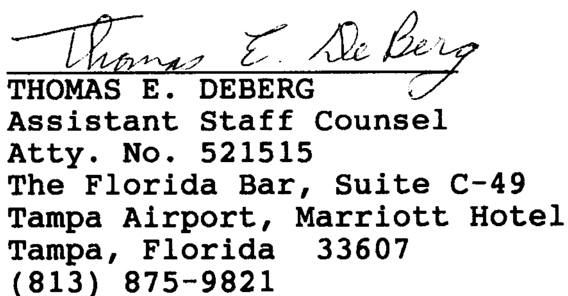
disbarred despite substantial evidence of mitigation. Shanzer was remorseful and had paid restitution. Shanzer argued that his depression, primarily over his marital and economic problems, led him to use his trust account for personal purposes. As this Court pointed out, these problems are visited upon a great number of lawyers, and "clearly, we cannot excuse an attorney for dipping into his trust account as a means of solving personal problems." Id. at 1384. This Court indicated that his restitution and cooperation with The Bar should be considered upon reapplication for membership in The Florida Bar. Id. In Shanzer, this Court further noted that mental problems, alcohol and drug problems may impair judgment so as to diminish culpability, but that the Referee had not found that to be a factor. In the instant case, the Referee makes no finding that Respondent's depression or other problems impaired her judgment. He notes only that she attributes emotional reasons as perhaps a reason for her conduct. No expert testimony, or any testimony of witnesses other than Respondent, was presented to show her judgment at the time of the thefts was so impaired by emotional problems that she should not be held fully responsible for her misconduct. Like Shanzer, Respondent was depressed and stole money to solve personal problems. Like Shanzer, Respondent should be disbarred.

Standard 5.11(a), Standards for Imposing Lawyer Sanctions, provides that disbarment is generally appropriate when a lawyer is convicted of a felony. Aggravating and mitigating factors in the instant case do not warrant a departure from that Standard. Further, Standard 5.11(b) indicates disbarment is the proper discipline when an attorney engages in serious criminal conduct, a necessary element of which includes...theft.

The appropriate discipline for an attorney who steals money from a governmental agency through forgery and conversion of money orders is disbarment. The fact that the attorney stole from a public agency while employed as a non-attorney, rather than stealing from a client to whom she was providing legal representation, does not reduce what would otherwise be a disbarment offense to a three (3) year suspension. Respondent's depression over personal problems is not sufficient to mitigate her offense from disbarment to suspension.

CONCLUSION

Disbarment is the appropriate discipline. Respondent's conduct does not merit less than disbarment simply because she stole in her non-attorney capacity. Any mitigation provided by partial restitution and remorse are outweighed by the gravity of the offense and her breach of public trust.



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CERTIFICATE OF SERVICE

I HERBY CERTIFY that a true and correct copy of the foregoing Initial Brief has been delivered by Certified Mail, Return Receipt Requested, No. P 404-296-169, to Delano Stewart, Counsel for Respondent, at 400 East Buffalo Avenue, Suite 103, Tampa, Florida, 33601 this 17 day of October, 1991.

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