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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)

COMPLAINANT'S REPLY 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. "RB" will refer to Respondent's Brief.

ARGUMENT

In Respondent's Answer Brief, Respondent asks the following question through counsel: What is the appropriate discipline for an attorney entrusted with money from a governmental agency for the sole purpose of having money out of the budget so that the allocation of the next year's budget would not be reduced. (RB 7). Respondent then notes that the money was placed into her hands by the governmental agency "purposefully, surreptitiously, and illegally so as to be able to retain the allocation of the housing authority." (RB 7). She states that this money "was placed in her hands not in an equitable fashion, but in a fashion that was an attempt to defraud the federal government, which enabled her to rationalize her conduct." (RB 12). Respondent suggests that this is a mitigating circumstance which assists in sustaining the referee's recommendation. Based on the argument in Respondent's Answer Brief, it appears that Respondent conspired with, or at the very least assisted, her employers at a government agency in their attempt to defraud the federal government. These actions are not mitigating.

Respondent suggests that the housing authority was not harmed by her actions. (RB 9). To the contrary, the image

of the housing authority was most assuredly besmirched by having an executive assistant in their program misappropriating funds, a fact which received wide press coverage. That image would be further damaged were it to be proven that the misappropriation was in some fashion tacitly sanctioned by housing authority personnel.

Further, it is alleged that it was depressing for the Respondent to work at the Tampa Housing Authority, which she described as the pit of corruption. (RB 2). If corruption was as rampant as suggested by Respondent, it is disconcerting that she took no action to bring that corruption to the attention of individuals who could have protected the public from the misconduct to which she alludes. The fact that Respondent is a former United States prosecutor, suggests that she clearly knew how serious her misconduct was and nevertheless went forward with the misappropriation, and based on Respondent's answer, she cooperated with an attempt to defraud the federal government.

Respondent cites several cases to support her argument that disbarment is not warranted. For example, Respondent cites The Florida Bar v. Piggee, 490 So.2d 1260 (Fla. 1986), noting the Court's statement therein that lesser sanctions

are appropriate in cases where client's are not injured, no fudiciary relationship is breached, and therefore, the conduct does not go to the heart of the confidence in the legal system. (RB 8). The conduct before the Court in Piggee was possession of small quantities of cocaine and marijuana, not forgery and theft of public funds such as that which occurred in the instant case. Further distinguishing the attorney in Piggee from Respondent is that Piggee fulfilled his responsibility to report the criminal charges and their disposition to The Florida Bar, an act specifically noted by the Court as mitigating. No such mitigation occurred in the instant case. More importantly, the gravity of the conduct in Piggee is far surpassed by Respondent's breach of her fiduciary duty to her employer, and to the public.

Respondent's breach of her fiduciary duty is comparable to that which occurred in The Florida Bar v. Bussey, 529 So.2d 1112 (Fla. 1988). In ruling that Attorney Bussey should be disbarred for breach of his fiduciary duties owed to a bank, and conversion of bank money, the Court noted that his conduct was analogous to theft from a client. Id. at 1113-1114. The Court stated, "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 irreputable 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." Id. at 1114. The Court then stated that without hesitation, they were providing that protection. This Court disbarred Attorney Bussey.

Respondent in the instant case not only has tarnished the image of the legal profession, she has conducted herself in a manner which could damage the reputation of the housing authority. Also, he claims she was aware of rampant corruption, and alleges she participated in a scheme to defraud the federal government in order to obtain funding for the housing authority.

Respondent takes the position that her misconduct is less egregious than cases where disbarment has been ordered. For example, Respondent discusses The Florida Bar v. Bunch, 195

So.2d 558 (Fla. 1967), in which an attorney was disbarred for misappropriation in his non-attorney capacity. Respondent notes that Bunch had not repaid $4,500.00 which he had stolen from a Bar Association, and thereby damaged the Association. Respondent suggests that in the instant case, her conduct caused no harm to any individual or association. Respondent distinguishes the instant case from Bunch by pointing out that Anderson made full restitution. (RB 5). To conclude that Respondent's conduct caused no damage to any individual or association, it is necessary to conclude that: her conduct did not tarnish the reputation of the housing authority; that her failure to report the fraud at the "pit of corruption" and her succumbing to the temptation to join that fraud, did not damage the reputation of The Florida Bar, nor of the Housing Authority; and that her conduct did not contribute in any manner to whatever damage may have been caused to the federal government by fraudulently procured allocations.

The Florida Bar cited The Florida Bar v. Margadonna, 511 So.2d 985 (Fla. 1987), as an example of an attorney being disbarred for thefts occurring outside an attorney-client relationship. Respondent stresses that Margadonna was adjudicated guilty and sentenced to serve three (3) years in

prison. (RB 5). The referee in Margadonna found that Margadonna had breached his ethical and moral responsibilities, and found that disbarment was the appropriate sanction for an attorney who had breached those responsibilities, as well as to deter others. Id. at 986. Respondent suggests that she should receive a lesser sanction because she was not adjudicated guilty. Certainly, the facts underlying a withhold of adjudication may be considered by a referee. Although the granting of a withhold of adjudication is not specifically listed under Standard 9.3, Florida Standards for Imposing Lawyer Sanctions, as mitigating, it is not excluded. However, the referee did not specifically find the granting of a withholding of adjudication to be a mitigating factor. Respondent suggests to this Court that it should be considered mitigating that Respondent Anderson is a former United States prosecutor, and was exposed to public embarrassment by her punishment. If in fact personal hardships from outside the discipline system provide mitigation, Margadonna becomes less distinguishable as a precedent for disbarment in the instant case. Margadonna was disbarred in spite of the public disgrace of an adjudication of guilt, a sentence of three (3) years in prison, and all of the deprivations of liberty and civil

rights consequent to an adjudication.

Respondent cites several examples where money was stolen by an attorney from the public or clients, but disbarment did not occur. In The Florida Bar v. Anderson, 395 So.2d 551 (Fla. 1981), Nelda M. Anderson was found to have deliberately disregarded her fiduciary responsibilities in using client funds. However, the Court noted that there was no criminal intent on her part, and that there was no reasonable explanation for the acts of misappropriation except ignorance. Id. at 552. She was suspended for two (2) years. In the instant case, the Respondent is a former United States Attorney who without question understood that her acts were illegal, but nevertheless forged signatures and misappropriated government funds from the agency where she was employed. She can not reasonably claim her acts were due to ignorance and lacked criminal intent.

Respondent also cites The Florida Bar v. Gillin, 484 So.2d 1218 (Fla. 1986). In Gillin, the Court ordered a one year suspension for an attorney who misappropriated funds from a firm where he was employed, arguably to resolve an argument he had with the firm over fee distribution. This Court noted that it would not tolerate misguided, irrational acts

of self-help involving disputes between partners in a law firm. Justice Ehrlich in his dissent, wrote that if Gillin had stolen from a client or the public, the Court would have imposed a much harsher discipline, and that disbarment would be the appropriate penalty for theft. Nevertheless, under the facts of Gillin, he agreed that the case seemed to merit a one year suspension. Id. at 1220.

In the instant case, the Respondent knew without question that she was not entitled to the money which she misappropriated, and most assuredly knew that forgery is a crime. Unlike Gillin, Respondent cannot reasonably take the position that she felt that she was entitled to the funds.

In distinguishing The Florida Bar v. Shanzer, 572 So.2d 1382 (Fla. 1991), Respondent points out that this is Respondent's only disciplinary offense, and that the misappropriated money was placed into her hands for an illegal purpose. First of all, there is no indication in Shanzer that Shanzer had any prior discipline. More importantly, that money was allegedly placed into Respondent's hands for an illegal purpose does not provide mitigation for her acts of forgery and misappropriation. The conduct does not become less offensive because she was going along with what she alleges

were her employer's attempts to defraud the federal government. She failed to act as a responsible attorney and member of the public by reporting what she believed to be corruption at the housing authority.

The important principle for which Shanzer stands remains viable and important for the protection of the public and the image of The Bar. An attorney cannot be excused for dipping into his trust account as a means of solving personal problems. The evidence does not clearly support the proposition that the Respondent was so impaired by emotional problems that she should not be held fully responsible for her misconduct. She, like Shanzer, should be disbarred.

In The Florida Bar v. Breed, 478 So.2d 83 (Fla. 1979), this Court noted that in the future it would not hesitate to disbar an attorney for misappropriation, even in the absence of client harm. In more recent cases such as Shanzer, this Court has found the mitigating circumstances insufficient to warrant a discipline other than disbarment. There is insufficient evidence of mitigation before the Court in the instant case to warrant anything other than disbarment.

CONCLUSION

Disbarment is the appropriate discipline. Respondent has not shown sufficient mitigation to warrant a lesser penalty for her forgery and theft of public funds.

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CERTIFICATE OF SERVICE

I HERBY CERTIFY that a true and correct copy of the foregoing Complainant's Reply Brief has been delivered by Certified Mail, Return Receipt Requested, No. P 750-391-350, to Delano Stewart, Counsel for Respondent, at 400 East Buffalo Avenue, Suite 103, Tampa, Florida, 33601 this 20 day of December, 1991.

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