IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORTDA BAR,

Complainant,

vs.

BRUCE LEE HOLLANDER,

Respondent.
_____/

SUPREME COURT CASE NO.: 78,896

The Florida Bar File
No. 91-50,126(17C)

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the Rules of Discipline, a hearing was heard on March 6, 1992. The pleadings and all other papers filed with the undersigned, which are forwarded to the Court with the report, constitute the entire record in this case.

During the course of these proceedings, the Respondent represented himself and The Florida Bar as represented by Stephen C. Whalen.

II. Finding of fact as to each item of misconduct of which the Respondent is charaed:

After considering all the pleadings and evidence before me, I make the following findings as to each of the three counts:

A. Respondent is, and at all times mentioned, was a member of The Florida Bar subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

B. The Respondent is the sole shareholder and sole partner of Hollander and Associates, P.A.

C. On or about April 9, 1989, Respondent and one Mrs. Lygia C. Tschirgi signed a contingency fee agreement, adopted and approved by Respondent, wherein the law firm of Hollander and Associates, P.A. undertook to represent her in a personal injury action against certain tortfeasors.

D. The Respondent solely authorized and adopted the contingency fee agreement utilized in Mrs. Tschirgi's case for use in personal injury representation.

E. Gladys Coia, an associate with Hollander and Associates, P.A. handled Mrs. Tschirgi's case, prior to leaving Respondent's firm.

F. The Respondent determined that Hollander and Associates, P.A. would terminate representation of Mrs. Tschirgi after concluding that further representation would not be successful or profitable.

G. On or about February 12, 1990, Scott J. Jontiff, Esquire, an associate employed by the Respondent, mailed a letter to Mrs. Tschirgi requesting her to execute a Notice of Termination declaring that she was discharging the firm.

H. Mrs. Tschirgi did not request that the Respondent or his firm discontinue representing her.

I. The Respondent informed Mrs. Tschirgi that $6,000.00 in attorney services had been *performed on* her behalf by his firm.

J. The termination of services clause in the fee agreement requires the client to pay the firm for all services rendered up to the time of termination. The termination of services clause entitles the firm to receive a pro rata share of recovery obtained by new counsel for the client in addition to the hourly fee for services.

K. The withdrawal clause of the contingency fee agreement entitles the firm to receive a fee equal to the percentage that it would have been entitled to if it had obtained the recovery unless an agreement is reached with the new attorney.

L. The termination of services clause improperly permits the Respondent to obtain an excessive fee in the event the client discharges his firm's services thereby penalizing the client for exercising her option to terminate his services.

M. The terms of the Respondent's contingency fee agreement provides for the collection of an excessive fee from Mrs. Tschirgi if she discharged the firm or if the firm withdrew representation.

N. The request made on Mrs. Tschirgi to sign the notice of termination form after the Respondent authorized termination of services evidences an attempt by the Respondent to engage in deceit for personal gain.

O. Respondent did not attempt to withdraw until October 15, 1990, in order to allow Mrs. Tschirgi to retain who would be substituted as counsel. Mrs. Tschirgi consulted with several attorneys, all of whom declined to represent her. Subsequently, the Respondent made a motion to withdraw which was granted by the Court.

P. A lien for services was filed by Respondent's firm in the Court file which fee would therefore be determined by the Court.

III. Recommendation as to Whether or Not the Respondent Should be Found Guilty: As to each count of the amended complaint, I make the following recommendations as to guilt or innocence:

COUNT 1

I recommend that the Respondent be found guilty of violating Rule 4-1.5(A), Rules of Professional Conduct, to wit:

> ...An attorney shall not enter into an agreement for, charge, or collect a ... clearly excessive fee.... A fee is clearly excessive when:
>
> (1) After review of the facts, a lawyer or ordinary prudence would be left with a definite and firm conviction that the fee exceeds a reasonable fee for services provided to such a degree as to constitute clear overreaching or an unconscionable demand by the attorney;...

COUNT II

I recommend that the Respondent be found not guilty of violating Rule 4-1.16(d), Rules of Professional Conduct, to wit:

> ...Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest, such as giving reasonable notice to the client allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. The lawyer may retain papers and other property relating to or belonging to the client to the extent permitted by law.

COUNT III

I recommend that the Respondent be found guilty of violating Rule 4-8.4(a) and (c), Rules of Professional Conduct, to wit:

> A lawyer shall not: (a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;...
>
> (c) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation...

IV. Recommendation as to Disciplinary Measures to be Applied: I recommend that the Respondent receive a public reprimand and be placed on probation for a period of six (6) months. The terms of probation recommended are as follows:

1.) Respondent shall immediately cease and desist from the use and/or enforcement of the termination of services and withdrawal clauses, which were the subject matter of this proceeding, in his firm's retainer agreements for contingency fee cases.

2.) In all of his firm's existing contingency fee cases wherein the subject termination of services clause and withdrawal clause appear, Respondent shall forthwith modify the same **so** that they do not exact an excessive fee or penalize the client for the exercise of the option to discharge Respondent's firm. Further, Respondent shall promptly notify each of the firm's affected clients of the modification. Prior to the termination of his probation, Respondent shall file his written certification that this has been accomplished herein with the clerk of the Supreme Court of Florida.

V. Personal History, Aggravating and Mitigating Factors: After a finding of guilt as to Counts I and III, I considered the following:

Personal **History**

The Respondent is 49 years of age and was admitted to the Florida Bar in 1973.

Aggravating Factors

1.) Past Discipline: On March **5, 1992,** the Supreme Court of Florida approved a referee's report dated July 2, 1991, which recommended that Respondent be found guilty of violating Rules 4-1.5(A), (F)(1) and (F)(2), Rules of Professional Conduct and be issued a public reprimand. The Florida Bar v. Hollander, Supreme Court Case No. **76,862,** The Florida Bar Case No. **90-50,105(17H).** The Respondent has also been found guilty of violating Rule 4-1.5(A) in the instant case.

2.) Selfish or Dishonest Motive: The undersigned concurs with the Bar Counsel's conclusion that the Respondent's conduct is more onerous than that of the attorney in The Florida Bar v. Doe, **550 So.2d 1111 (Fla. 1989)** because the Respondent's firm attempted to have the client discharge the firm against the client's will in order to exact benefits from the unconscionable termination clause of the retainer agreement.

3.) Vulnerability of Victims: The Respondent acknowledged at the hearing that most of his firm's clients are not attorneys and as such, presumably unaware of the fact that the Rules of Professional Conduct prohibit attorneys from entering into a retainer agreement which calls for excessive fees or exacts a penalty against the client for the discharge of an attorney.

Mitigating Factors

1.) Respondent has not sought to enforce the terms of the retainer agreement other than to file a charging lien with the Court. According to Respondent, the lien did not set forth any

amount claimed or specifically refer to the retainer agreement. Respondent testified that it was his understanding that the Court would set the appropriate fees due the firm based on a quantum meruit basis.

2.) In his Memorandum in Support of Mitigation, Respondent has expressed remorse for his actions.

VI. Statement of Costs and Manner in Which Costs Should be Taxed: I find the following costs were reasonably incurred by The Florida Bar.

VII. Statement of Costs:

Administrative Costs	$500.00
Investigative Costs	120.81
Court Reporter Costs	639.35
SUB TOTAL COSTS DUE THE FLORIDA BAR	$1,260.16

It is apparent that other costs have or may be incurred (e.g. costs of the final hearing). It is recommended that all such costs and expenses together with the foregoing itemized costs be charged to the Respondent.

Dated this 2nd day of APRIL, 1992, at Miami, Dade County, Florida.

Melvia B. Green

MELVIA B. GREEN
Referee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above report of referee has been served on Stephen C. Whalen, Bar Counsel, at The Florida Bar, Cypress Financial Center, 5900 North Andrews Avenue, Suite 835, Fort Lauderdale, Florida 33309; Bruce L. Hollander, Respondent, Hollander & Associates, P.A., 1940 Harrison Street, Hollywood, Florida 33020; John T. Berry, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300; and John F. Harkness, Jr., Executive Director, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300 this 2nd day of April, 1992.

Melvia B. Green

MELVIA B. GREEN
Referee