

007

8-8
FILED

SID. J. WHITE

JUL 25 1994

CLERK, SUPREME COURT

By

Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,)
)
 Complainant/Appellee,)
)
 v.)
)
 DOMENIC LEONARD GROSSO,)
)
 Respondent/Appellant.)
 _____)

Supreme Court Case
No. 82,776

The Florida Bar File
No. 93-50,256(15F)

ANSWER BRIEF OF THE FLORIDA BAR

DAVID M. BARNOVITZ, #335551
Bar Counsel
The Florida Bar
5900 N. Andrews Ave., Suite 835
Ft. Lauderdale, Florida 33309
(305) 772-2245

JOHN T. BERRY, #217395
Staff Counsel
The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300
(904) 561-5839

JOHN F. HARKNESS, JR., #123390
Executive Director
The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300
(904) 561-5839

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CONTENTS	i
TABLE OF CASES AND CITATIONS	ii
STATEMENT OF THE CASE AND OF THE FACTS	1
SUMMARY OF ARGUMENT	4
ARGUMENT	5
POINT I - THE REFEREE'S RECOMMENDED APPROACH TO BRING AID TO THE RESPONDENT WHILE PROTECTING THE PUBLIC SHOULD BE ADOPTED BY THE COURT	
CONCLUSION	6
CERTIFICATE OF SERVICE	6
APPENDIX	
Exhibit 1	7
Exhibit 2	8
Exhibit 3	9

TABLE OF CASES AND CITATIONS

	Page
<u>RULES REGULATING THE FLORIDA BAR</u>	
Rule 3-4.8	2
Rule 3-7.6(g)(2)	2
Rule 4-8.4(g)	2

STATEMENT OF CASE AND FACTS

Appellant has failed to include a statement in his brief. The bar, respectfully, offers the following:

By certified mail letter, return receipt requested, dated September 24, 1993, the bar directed an investigative inquiry to respondent which inquiry recited, inter alia, as follows:

Pursuant to rules promulgated by the Supreme Court of Florida effective July 1, 1993, you are obligated to respond, in writing to this inquiry. A summary of such rules is enclosed. Your written response must be received by me no later than October 13, 1993, and may be sworn or unsworn and may explain, admit or refute the allegations of misconduct. Failure to submit a written response may result in the finding of violations of the referenced rules mandating such written response. In addition to such written response, you are invited to attend the committee's meeting which will be held at the offices of its chair, Ryna Mehr, Reflections Building, 2200 Corporate Boulevard, N.W., Boca Raton. Should you determine to attend, you should present yourself at 9:15 a.m. on October 15th and bring with you your complete file in the referenced matter. It will be expected that your file will have all correspondence, telephone records, and pleadings in chronological order and that you will have thoroughly familiarized yourself with the file prior to your attendance.

The above-referenced investigative inquiry was received at respondent's office on September 29, 1993.

Despite having received and read the investigative inquiry, respondent failed to make any response thereto, written or otherwise, and failed to attend at the grievance committee meeting referenced therein.

A report of referee was filed on January 24, 1994, in which a recommendation was made that respondent be suspended from the bar for a

period of 60 days, that respondent meet certain conditions and that respondent pay the bar's costs.

The predicate for the referee's recommendation is that respondent defaulted throughout the disciplinary process, from the inception thereof through the formal bar proceedings; that respondent paid no heed to the mandatory response provisions of Rules 3-4.8, 4-8.4(g) and 3-7.6(g)(2), Rules Regulating The Florida Bar.

The report was considered by the Board of Governors of The Florida Bar at its February, 1994, meeting. By letter to the Court dated February 18, 1994, a copy of which was furnished to respondent, the bar reported that the board determination was not to seek review. The Court was informed that respondent had until March 7, 1994, within which to file a petition for review. A copy of such letter is attached as Appendix Exhibit 1.

On March 7, 1994, respondent wrote a letter to the bar's Director of Lawyer Regulation, in effect, requesting that the bar reduce the referee's recommended sanction. The Court was copied with such letter, another copy of which is attached hereto as Appendix Exhibit 2.

By letter to respondent dated March 15, 1994, the bar's Director of Lawyer Regulation informed respondent that any relief he might request vis a vis the referee's recommendation must come from the Court through the prescribed review process. Respondent was further informed that the bar would not object to a late filed petition but advised respondent that the petition be filed within 7 to 10 working days. A copy of such letter is attached as Appendix Exhibit 3.

The Court received respondent's petition for review on March 28, 1994.

In his letter to the Director of Lawyer Regulation, respondent represented:

Also, just to get this monkey off my back, I will file a response to Mr. Schneelock's complaint¹ seven days from the date of this letter. If I don't, you can suspend me for whatever time you want (see page 3).

In his petition for review, respondent recites:

And to show that I have gotten over this gripping paralysis in reference to the Schneelock complaint, that I file an immediate response thereto (see page 5).

Respondent did not tender a response to the Schneelock grievance until May 13, 1994, after being subpoenaed by the grievance committee (see bar's motion to dismiss respondent's petition for review, page 2, paragraph 9, and respondent's response to motion to dismiss petition for review, page 2, paragraph 6).

Respondent did not timely file a brief necessitating a motion to accept a late filed brief.

The bar has since filed a complaint with the Court (case number 83,989) in which respondent is charged with various rule violations relating to the substantive allegations of the Schneelock grievance.

¹ The referenced Schneelock complaint is the grievance which respondent neglected to address leading to the probable cause findings that respondent violated Rules 3-4.8 and 4-8.4(g), Rules Regulating The Florida Bar.

SUMMARY OF ARGUMENT

By his self-professed, gripping paralysis and his demonstrated inability to address this appeal in conformity to the Rules Regulating The Florida Bar and to Florida Rules of Appellate Procedure, respondent confirms the referee's concern that respondent presents a potential danger to his clients. Relief should be fashioned in an attempt to insure that respondent receives treatment for his inability to cope and that his clients receive some assurance that they will not fall victim to respondent's weakness.

ARGUMENT

POINT I

THE REFEREE'S RECOMMENDED APPROACH TO BRING AID TO THE RESPONDENT WHILE PROTECTING THE PUBLIC SHOULD BE ADOPTED BY THE COURT

The bar recommended to the referee that respondent be suspended for a period of ten (10) days, that he be afforded a specified time within which to address the substance of the underlying bar grievance and that in the event respondent failed timely to respond to such grievance that respondent's suspension be increased to ninety-one (91) days (see transcript of final hearing, page 25, lines 6-25, and page 26, lines 1-5).


It is respectfully submitted that the referee was more insightful and that the approach employed by him in his recommendation better serves the respondent and the public. His approach will not permit respondent to resume the practice of law until respondent secures psychiatric consultation and until the bar receives certification from a Florida licensed psychiatrist that respondent can cope.

In his brief, respondent urges that the referee's approach be affirmed but that the length of his suspension be reduced from sixty (60) to ten (10) days. The bar does not regard the length of the suspension as crucial. The bar's concern has been and continues to be that respondent address his problem by securing the requisite medical attention which action will, hopefully, protect the public.

CONCLUSION

A suspension with reinstatement conditioned upon psychiatric certification will aid the respondent and protect the public.

All of which is respectfully submitted.


DAVID M. BARNOVITZ, #335551
Bar Counsel
The Florida Bar
5900 N. Andrews Ave., Suite 835
Ft. Lauderdale, Florida 33309
(305) 772-2245

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer Brief of The Florida Bar has been furnished by regular mail to Domenic Leonard Grosso, Respondent, at 2424 N. Federal Highway, Suite 360, Boca Raton, Florida 33431, on this 22ND day of JULY, 1994.


DAVID M. BARNOVITZ