

**FILED**

SID J. WHITE

JAN 24 1994

CLERK, SUPREME COURT

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

DOMENIC LEONARD GROSSO,

Respondent.

Supreme Court No. 82,776

By \_\_\_\_\_  
Chief Deputy Clerk

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

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

The undersigned was appointed as referee to preside in this proceeding by order of this Court dated December 10, 1993. The pleadings, transcript of hearing and all other papers filed with the undersigned, which are forwarded to the Court with this report, constitute the entire record in this case.

Respondent appeared on his own behalf, pro se. The bar was represented by David M. Barnovitz, bar counsel.

The bar's complaint was filed with the Court on November 24, 1993. According to the certificate of service appearing in the bar's complaint, it was served by certified mail on November 24, 1993. The return receipt establishes that the complaint was received at respondent's office on November 26, 1993. If one were to consider the date of receipt as the service date and add an additional five (5) days thereto for service by mail, respondent's time within which to have filed an answer would have expired on December 21, 1993. The bar filed its motion for judgment on default on January 4, 1994. The certified mail return receipt establishes that respondent received the bar's application on January 5, 1994. Respondent chose to wait until the return date of the

hearing on the bar's motion for judgment on default, January 14, 1994, before filing an answer. Respondent has offered no excuse for his default and offered no meritorious defense to the charges leveled against him in the bar's complaint. Under the circumstances, the bar's application for judgment by default is granted.

**II. FINDINGS OF FACT AS TO EACH ITEM OF MISCONDUCT OF WHICH THE RESPONDENT IS CHARGED.**

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

B. 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.

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

D. 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.

**III. RECOMMENDATIONS AS TO WHETHER OR NOT THE RESPONDENT SHOULD BE FOUND GUILTY:**

By failing to respond, in writing, to the bar's September 24, 1993 investigative inquiry, as aforesaid, respondent thereby violated Rules 3-4.8 and 4-8.4(g), Rules Regulating The Florida Bar.

**IV. RECOMMENDATIONS AS TO DISCIPLINARY MEASURES TO BE APPLIED:**

The bar has informed this referee of the Court's decision in The Florida Bar v. Vaughn, 608 So. 2d 18 (Fla. 1992) in which the Court, presented with a similar fact pattern, directed a public reprimand. The main distinction between this case and Vaughn, supra, is that the respondent here, was subject to the two (2) new rules (effective July 1, 1993) promulgated by the Court as a direct result of the Vaughn case and put on express notice of such rules and his obligation to respond to the bar's investigative inquiry. Despite being warned of the consequences of his failure to cooperate, this respondent has persisted in his neglect. More compelling, however, is the fact that having been called by the grievance committee at the meeting respondent failed to attend, respondent continued to avoid presenting any type of response to the underlying allegations of misconduct. Instead, three days after the meeting, respondent wrote to the bar stating, in the last paragraph of his letter:

Again, let me just state that I will respond to each and every allegation that Mr. Schneelock makes, in addition to anything else contained herein, and

I would just ask that I be given the opportunity to address these issues.

Upon receipt of such letter, the bar responded as follows:

I have received your October 18, 1993 letter and frankly, am amazed that you still avoid the allegations directed at you by Mr. Schneelock. I have already prepared the complaint for filing with the Supreme Court of Florida in connection with the probable cause findings for your failure to respond. I would suggest to you that you focus your attention on the remainder of my September 24 letter and present to the committee, through me, an immediate written response on the merits and not a further statement such as contained in the last paragraph of your October 18th letter.

Respondent has not, to date, submitted an explanation to the committee.

Under the circumstances, Vaughn, notwithstanding, I believe that a stiffer sanction is warranted, not for punitive reasons (as I have had the opportunity to observe the respondent and have found him to be candid, articulate, respectful of the referee and bar counsel and not suffering from any patent addiction), but for this referee's perception that respondent's seeming inability to confront the bar proceedings, at any stage thereof, is indicative of some deep-rooted, personal problem, which, unchecked, presents such a clear and present danger to the public as to mandate that respondent be suspended. Such suspension will afford to respondent an opportunity to seek whatever help/treatment he requires, enable him once and for all to confront the allegations of misconduct underlying the bar's investigation and respond appropriately thereto either by invoking any privilege(s) to which he may be entitled or by addressing the accusations on the merits, while at the same time, insure that his inability to cope does not extend to his clients, who, if

subjected to similar neglect and the paralysis exhibited by respondent in these proceedings, will suffer incalculable prejudice. I, therefore, recommend that respondent be suspended for a period of 60 days. I also recommend that respondent be placed on probation and that prior to his resumption of the practice of law respondent be required to: (1) furnish to the bar a certification from a Florida licensed psychiatrist attesting to respondent's ability to resume his practice and (2) furnish to the bar a full and complete response to the September 24, 1993 investigative inquiry referenced in the bar's complaint.

V. PERSONAL HISTORY:

Respondent is 44 years of age and was admitted to The Florida Bar on November 14, 1978.

VI. STATEMENT AS TO PAST DISCIPLINE:

Respondent has no prior disciplinary history.

VII. STATEMENT OF THE COSTS OF THE PROCEEDING AND RECOMMENDATIONS:

The costs of the proceeding were as follows:

Administrative costs	\$500.00
Copies	30.00
Transcript	210.00
Total	<u>\$740.00</u>

I recommend that the costs be taxed against the respondent.

Rendered this 18 day of January, 1994 at Fort Lauderdale, Florida.



Robert C. Abel, Jr., Referee

Copies furnished to:

David M. Barnovitz, Bar Counsel  
Domenic Leonard Grosso, Respondent