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IN THE SUPREME COURT OF FLORIDA

SUPREME COURT CASE NO. 83,058

4/12

The Florida Bar File
No. RRE-87-070

FILED

SID J. WHITE

MAR 24 1994

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

BRUCE L. HOLLANDER,

Petitioner,

vs.

THE FLORIDA BAR,

Respondent.

_____ /

ON APPEAL FROM THE BOARD OF GOVERNORS
OF THE FLORIDA BAR

FILE NO.: RRE-87-070

PETITIONER'S INITIAL BRIEF

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The Florida Bar vs. Rood, 19 Fla. L. Weekly S 50
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STATEMENT OF THE FACTS OF THE CASE

BRUCE L. HOLLANDER, is a Florida attorney practicing for 20 years in the area of real estate law. Mr. Hollander was designated in the area of real property law. When certification first became available to Florida Bar members in the area of real estate in 1988, Mr. Hollander successfully completed all of the requirements allowing him to become a member of the first group of Florida Bar Board Certified real estate lawyers.

During the next five years, Mr. Hollander successfully completed all of the necessary continuing education requirements and submitted his application and fee for recertification as a Florida Bar Board Certified Real Estate Lawyer. The application for recertification was denied because of two public reprimands that Mr. Hollander had received from the Florida Bar, one in 1992 and one in 1993.

Mr. Hollander appealed the denial of his recertification through the appropriate administrative levels of the Florida Bar without success. This appeal to the Florida Supreme Court followed.

POINTS ON APPEAL

- I. WHETHER THE TWO PUBLIC REPRIMANDS RECEIVED BY MR. HOLLANDER ARE INSUFFICIENT GROUNDS TO DENY HIM RECERTIFICATION AS A FLORIDA BAR BOARD CERTIFIED REAL ESTATE LAWYER.....2

ISSUE

I

THE TWO PUBLIC REPRIMANDS RECEIVED BY MR. HOLLANDER ARE INSUFFICIENT GROUNDS TO DENY HIM RECERTIFICATION AS A FLORIDA BAR BOARD CERTIFIED REAL ESTATE LAWYER.

The concept of Florida Bar certification is to allow an attorney to indicate to the public his proficiency, knowledge and substantial involvement in a specific area of the law.

The certification concept as contained in the Florida Supreme Court's enabling opinion noted: "We believe that the public is entitled to know which lawyers have demonstrated special skills and possess technical competency in specific legal areas."

Certification is not supposed to be the sole criteria for the public to choose an attorney. Certification is not intended to be an endorsement by the Florida Bar as to a lawyer's suitability to serve a client. In fact, the certification rules approved by the Florida Supreme Court mandate the following: "Public Notice: Attorneys indicating Board Certified by the Florida Bar have been certified by the Florida Bar as having special knowledge, skills and proficiency in their areas of practice. All persons are urged to make their own independent investigation and evaluation of any attorney being considered."

Although the certification and recertification process has an ethical component as a part of the peer review process the main thrust of certification is on performance and proficiency in the specific legal area being certified. The performance and proficiency criteria includes 1) practice for at least five years,

2) a showing of substantial involvement in the specific area of law
3) a showing of continuing legal education and 4) the passing of an exam given by the Florida Bar.

All of these requirements have been met by Mr. Hollander, both for certification and for recertification.

In both of the cases which resulted in public reprimands, Mr. Hollander's practice of Real Estate Law was not involved. It is for this reason that the facts underlying the two reprimands should be reviewed.

In the first case, The Florida Bar vs. Bruce Lee Hollander, Supreme Court Case No. 76,862, Mr. Hollander was found guilty of charging an excessive fee relating to the collection of a construction lien, not having a written contingent fee contract and not obtaining a written and signed closing statement. The case began as a collection matter pursued by Automated Credit Services, Inc., a collection agency owned by Mr. Hollander. Eagle Air Conditioning, Inc., signed a contingent fee contract with the agency for the collection of an outstanding bill for the installation of some air conditioning units. When the agency was unable to collect, Eagle Air was referred to Jerome Ventura, an associate of Hollander & Associates, P.A., to pursue the Mechanic's Lien previously filed by Eagle Air. The Associate neglected to obtain a signed contingency fee retainer agreement for the firm. The signed Automated Credit Services retainer agreement did give Automated Credit Services the right to hire counsel to pursue the claim on behalf of the client. After suit was filed and the case had progressed somewhat, it was determined that the bonding company

would not be liable for payment of the lien, contrary to the already filed public records. Mr. Hollander then became involved in the case and spoke directly with the President of Eagle Air, Mr. Frances Joseph Ferrano, Junior. The developer, who was being pursued by Eagle Air, was also being sued in a foreclosure suit for over nine million dollars by the first mortgage holder. Mr. Hollander and Mr. Ferrano, had a discussion involving a change in the fee structure. Hollander & Associates, P.A., agreed to continue the case on a 40% contingent fee basis, provided that Hollander & Associates, P.A., would be assured a minimum fee based upon the time spent and charged at the rate of \$50.00 per hour, to be paid out of any monies collected.

Mr. Hollander was able to have the court reinstate the lien nunc-pro-tunc to the date that the fraudulent notice of bond had been filed. This action by the court would have required the lender to re-foreclose its mortgage against the Eagle Air lien. It was determined by Mr. Hollander, that the lien filed by Eagle Air was incorrect and void. The lender offered to pay \$3,250.00 to Eagle Air to avoid having to amend the mortgage foreclosure action. Mr. Ferrano was apprised of the offer of settlement, the fact that the lien was void and that Hollander & Associates, P.A., had approximately \$6,000 worth of time in the case up to that point. It was agreed that Hollander & Associates, P.A., would take the \$3,250.00 and apply it towards its fee. Nothing further transpired for at least 9 months, when the accountant for Eagle Air wrote to Hollander & Associates, P.A., requesting the status of the Eagle Air claim and the likelihood of collection. Mr. Hollander answered

the accountant stating that the amount claimed by Eagle Air should be written off as an uncollectible debt and that the \$3,250.00 collected had been applied to the attorneys fees due Hollander & Associates, P.A.

Sometime thereafter, Mr. Ferrano filed the Bar complaint against Mr. Hollander. After a hearing at which Mr. Ferrano admitted that the discussion concerning the fee change had occurred but denied that he had agreed to the change, the referee found that Mr. Hollander had violated the canons of ethics and had charged an excessive fee. The referee found that Hollander & Associates, P.A., had done the work claimed, but that no written contingent fee agreement nor closing statement had been obtained from Eagle Air. A refund of the excessive fee was ordered and paid by Hollander & Associates, P.A. A public reprimand was recommended and carried out by the Board of Governors.

In the second case, *The Florida Bar v. Bruce Lee Hollander*, Supreme Court Case No. 78,896, Mr. Hollander was found guilty of charging an excessive fee in connection with a Personal Injury case, because the signed written contingent fee agreement used by the firm violated the canons of ethics because it provided for an hourly fee in the event that the firm was discharged by the client or withdrew from the case before any monies were recovered by the firm.

The case was brought into the office by Gladys Coia, an associate of the firm. The case involved a slip and fall accident in which Lygia Tschirgi, the client, was injured when she fell in a model home. During her deposition, Mrs. Tschirgi was unable to

identify the home in which she fell, even though she was shown photographs of the home taken by her late husband. When Ms. Coia left the firm the case was assigned to Scott Jontiff, another associate of the firm, who, upon learning that the builder/home owner, had no insurance recommended that the case be dropped.

Mr. Hollander reviewed the file, and concluded that the firm would not continue representing Mrs. Tschirgi. She was notified by Mr. Jontiff and requested to sign a stipulation discharging the firm. She refused. Her Bar complaint followed. Mr. Hollander and Mr. Jontiff both testified that Mr. Hollander was in no way involved in the process by which the firm attempted to terminate its relationship with Mrs. Tschirgi.

The referee found that the written retainer agreement as drafted by Mr. Hollander, was in violation of the canons of ethics because it attempted to extract an impermissible fee from the client. The referee also found that Mr. Hollander acted with an evil and ulterior motive in connection with the attempt to have Mrs. Tschirgi sign a stipulation discharging the firm.

Both of the cases that resulted in Mr. Hollander's public reprimands were precipitated by actions taken by associates of the firm and involved litigation cases. Neither case involved Mr. Hollander's real estate practice or his ability as a Real Estate lawyer.

As a result of these two reprimands and other experiences with associates, Mr. Hollander has reduced the size of his firm and has no associates. The firm name has been officially changed from Hollander & Associates, P.A., to Bruce L. Hollander, P.A. Mr.

Hollander continues practicing with a large emphasis in the area of real estate law.

The Florida Standards for imposing lawyer sanctions under Public Reprimand states that "Public Reprimand is a form of public discipline which declares the conduct of the lawyer improper but does not limit the lawyer's right to practice." Rules regulating the Florida Bar, Florida Standards for Imposing Lawyer Sanctions B. Sanctions 2.5 Public Reprimand, the Florida Bar Journal, September 1994. The public reprimands received by Mr. Hollander do not alter the certification concept because the general public has the ability to make an independent investigation and evaluation of Mr. Hollander as a potential attorney simply by reviewing his Florida Bar disciplinary record.

In the ultra-competitive market involving real estate attorneys, the added distinction of being a Florida Bar Board Certified Real Estate Attorney is an important component to Mr. Hollander's ability to succeed in the practice of law. It is apparent that Mr. Hollander has made the effort to become Board Certified because he believes that that distinction is important. The commitment that he has made to the public by obligating himself to meet the stringent continuing education requirements should not be ignored.

Mr. Hollander can not undo the public reprimands he has received. There is no statute of limitations regarding them. His record with The Florida Bar will not be expunged in the future. If Mr. Hollander is denied recertification at this time, but allowed to apply for certification in the future, necessitating complete

compliance with the certification requirements, including retaking of the certification exam will not change the fact that he has received two public reprimands. The passage of time will not erase the two reprimands received by Mr. Hollander from his Florida Bar records. Whether Mr. Hollander practiced for 19 years without any violations of The Florida Bar Rules, or practices for another 19 years without any other violations, should not be the basis for denying him the ability to continue to certify his competency as a real estate attorney to the public.

Mr. Hollander's ability as a real estate attorney is not now in question and was not in question in either case which resulted in the public reprimands.

There should be a relationship between the request for recertification, the denial and the disciplinary findings evidenced by the public reprimands. In the case of The Florida Bar vs. Rood, 19 Fla. L. Weekly S 51 (Fla. 1994) this court ruled that, the referee's recommendation of disbarment was inappropriate because the "nature of the charges against Rood and what he did do not reflect unfitness to practice law..." So to in this case, the nature of the public reprimands imposed on Mr. Hollander do not reflect on his ability as a real estate lawyer. This is consistent with the overall concept of lawyer certification - that is, a pronouncement by The Florida Bar that the attorney in question is proficient and competent in the area of certification and not that certification is an endorsement by The Florida Bar of that attorney.

Based upon the facts of this case, the nature of the two


public reprimands received by Mr. Hollander, the change in his office structure and his desire to distinguish himself as a Florida Bar Board Certified Real Estate Attorney, his request to be recertified as a Florida Bar Board Certified Real Estate Attorney should be granted and the decision of the Board of Governors denying recertification should be reversed.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing was forwarded via U.S. mail to JOHN F. HARKNESS, JR., EXECUTIVE DIRECTOR, THE FLORIDA BAR, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, this 18th day of MARCH, 1994.

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By:



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