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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,
Complainant,
-vs-
EDWARD B. ROOD,
Respondent.

Case No. 83,768
TFB 94-11,215(13D)

FILED

SID J. WHITE

JAN 29 1996

2/19

CLERK, SUPREME COURT

By

Chief Deputy Clerk

RESPONDENT'S INITIAL BRIEF AGAINST THE REFEREE'S FINDINGS

This case began with a request of The Florida Bar to compel me to show cause why I should not be held in contempt and disbarred and fined and/or incarcerated for violating this Court's Order in Case No. 78,741 and 78,795, and effective September 2, 1993.

1. On May 25, 1994, the Bar filed with the Court its claims of violations by Rood. In response to that Petition, Rood, on June 27, 1994, filed his response, answering all of the Bar's allegations.

2. The Bar then filed its second Petition To Show Cause dated July 8, 1994, and in that Petition, the Bar dropped some of its previous allegations but added new ones. In response to the new allegations, Rood filed his response to The Bar's allegations on August 15, 1994.

3. The Bar then filed its reply, adding new allegations, dated August 23, 1994. Rood then filed his final response to The Bar's new allegations and new exhibits.

Pursuant to the Court's instructions, retired County Judge Easton was appointed to conduct the hearing. The Referee had all of the above-mentioned Briefs; three filed with this Court by The Bar and three responses filed by Rood. At the first informal meeting of Mr. Corsmeier and Rood to select a date for the hearing, the Referee stated that he had read all six of the aforementioned Briefs and that it appeared to him that the Briefs concerned the LoCastro case.

THE LOCASTRO CASE

In 1991, five years ago, Mrs. LoCastro came to Rood's office requesting him to handle her automobile accident case. Her complete file and all of my efforts to represent her was nine inches thick when I turned it over to Mr. Freeman in June 1993. My suspension was effective on September 2, 1993.

Before she came to me, she had tried to employ a lawyer in her county, Citrus, but none of the lawyers would take her case. In my first interview with her, she said that she had seen two doctors for treatment in her home county but that they could find nothing wrong. She gave me the doctors' names and told me that neither of the doctors examined her. I wrote for their reports on the examination and found that both had examined her and found no injury caused by the accident. I was concerned whether she would be truthful with me but decided it was just poor memory on her part. I worked diligently to gather information on how the accident occurred and I sent her to several doctors in Tampa and discussed with them the complicated problems of her physical condition. Two years after the accident, and after I had filed suit in Hillsborough County, and after extensive work on the medical problems on her case and the liability problems in one of the cases, my eyesight, which

had been gradually weakening, became so bad that I was told not to drive an automobile in misty or rainy weather and never at night. Then the case was transferred by Court Order to Citrus County, causing me to tell Mrs. LoCastro that I would have to withdraw from her case. I checked through all of my 28 ongoing personal injury cases and found that three of them would have its hearings, depositions, and mediation and trials away from Tampa, and realizing that all or some of the three cases might have to go to trial, I began searching for a lawyer in late May 1993 who would take one or all of the three cases. Those three were the LoCastro, the Tucker, and the Zeller cases. None of the three were my clients when I was suspended, and thus they were never placed on the list of cases I was handling when I was suspended. Also, Tucker and Zeller and LoCastro knew of my suspension from a newspaper report in June of 1993.

All of the lengthy Petitions of the Bar in this case, and my Answers, were filed with the Supreme Court. Each discussed only the LoCastro case. Trouble arose in that case for just one reason, and that was that Mrs. LoCastro had been told by her lawyer, Mr. Freeman, that his fee in both cases was 40%. She complained that fee in the Prudential case was high, and she complained about the fee to The Florida Bar Office of Mr. Corsmeier, and Mr. Corsmeier had Mr. Egan to listen to her complaint concerning the 40% fee. That same day, Mrs. LoCastro then went to see

Mr. Freeman, and she was told that the fee was not 40% but was 33-1/3rd percent. That amount satisfied her and she told the Bar that her complaint had been remedied. Mr. Corsmeier instructed Mr. Egan to take her statement under oath, she objected and against her will, she was subpoenaed to come to the Bar Office in Tampa. She gave her information after swearing before a notary public that she was telling the truth.

Mr. Corsmeier then filed the Complaint against E. B. Rood. The Supreme Court ordered that the Bar investigate this LoCastro matter to determine if I had violated Bar Rules in the LoCastro case.

In due course, Mr. Corsmeier filed with the Supreme Court the Bar's Brief, and I filed a responding Brief.

Mr. Corsmeier then filed a Second Brief, adding new claims in this matter, and I again filed an Answer to that Second Amended Brief.

Thereafter, Mr. Corsmeier filed a Third Brief, adding new claims, and I answered that Brief, showing that the new allegations were also without merit.

This Court then ordered that a Referee be appointed to hear the Bar's allegations and my response in the LoCastro

case. Judge Easton, a retired County Court Judge, was selected to hear the case.

It is undisputed that Mr. Freeman handled the entire case of Mrs. LoCastro against Prudential Insurance Company. At the Bar's request, Prudential was requested to supply a record of the settlement proceeding. (Copy attached.) That record is filed with this Court and it shows that there is no dispute concerning the fact that Mr. Freeman handled all of the filing of the case and the settlement negotiations. The settlement of \$40,000.00 was made payable to Mr. and Mrs. LoCastro and to Michael Freeman. As mentioned before, Mr. Freeman first asked for Mrs. LoCastro to pay a 40% fee. She objected, and Mr. Freeman then charged her a fee of one-third. A copy of the \$40,000.00 check was mailed to Mrs. LoCastro, and Mr. and Mrs. LoCastro were requested to come to Tampa to sign the check and a Release Of All Claims required by all insurance companies. Mrs. LoCastro had not told her husband that both of her cases had been settled and that he was a payee in both of the cases. She didn't want her husband to know about the \$40,000.00 and she also didn't want to sign the Release of All Claims required by the insurance company until she had her part of the \$40,000.00 in her hands, and so she put in writing that she would not sign the Release Of All Claims until she had her money. Mr. Freeman couldn't think of a way to pay Mrs. LoCastro at the same time that she signed the Release Of All Claims. He

finally thought that the only solution was to have Mrs. LoCastro's check placed in my Trust Account and then to pay her portion and Mr. LoCastro's portion at the same time that she signed the Release Of All Claims.

The only expert about bank records that testified at the hearing was Mrs. Rash, and she explained clearly that my Trust Fund was used only once which was when the \$40,000.00 check was deposited by Freeman. Her testimony was so clear and correct that the Bar did not call its own expert or anyone in to contradict her accurate testimony, because that expert witness had already verbally said to her that there were no errors about the Trust Fund unless the \$40,000.00 check deposit was an error.

Since the Bar could not find anything improper in the LoCastro case that Mr. Rood was guilty of, the Bar changed its Complaint made to the Supreme Court by adding at the hearing new claims by new witnesses. Over my objection of new issues and two new witnesses, the Bar offered new witnesses with no opportunity to Rood to refresh the new witnesses' memory and refreshing my memory by seeing the files. The Bar made it impossible to rebut inaccurate testimony, because the Bar would not lend me its copy it had made of all of Mr. Freeman's files and had returned those files to Mr. Freeman. The Bar would not lend me its copy, and Mr. Freeman could not find his copies at such short

notice, and thus I could not show that Mr. and Mrs. Tucker and Mrs. Zeller did not remember much of anything in the file. I had no way of knowing that the Bar was going to at the last minute go into issues in two cases which were not even my clients at the time I was suspended. I was also surprised that at my deposition a couple of days before the trial, the Bar did not inform me of the new issues, or at least show the copies of the new witnesses' files.

In short, the Bar did not amend its pleadings, and because of the situation regarding the two files, there was no possible way for me to show the large amount of work that Mr. Freeman did on the Tucker and Zeller cases to get them settled with tough insurance companies. If I had been allowed to show all the work he did in preparing the medical information, proof of the lost income, proof of the medical bills, proof of the permanency of the injuries, the pain and suffering, and all the things that go into getting information to the insurance adjuster in order to begin trying to settle the case, and also preparing for mediation. All of that work would not require a visit to Tampa to see Mr. Freeman.

All of my work and thoughts about settlement, and what amount the clients wanted to settle the case, were already in the file I had given to him when the file was passed on to Mr. Freeman. There was no reason for either client to

come to Tampa until the settlement check arrived.

At the hearing before the Referee, Rood presented uncontradicted testimony that he had ceased representing Mrs. LoCastro on June 30, 1993 which is before he was suspended, and that the Bar's allegations were not proved, and that Rood was incapacitated in January, February and half of March 1994 due to injuries which he received being kidnapped on January 1, 1994.

Since the allegations of Rood's actions were not proved, this case should be dismissed.

Respectfully submitted,



EDWARD B. ROOD
200 Pierce Street
Tampa, Florida 33602
Phone: 813 - 229-6591
RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of the foregoing have been furnished by mail to: Sid J. White, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927; and that a true copy has been furnished by mail to: John T. Berry, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399; and to Joseph A. Corsmeier, Assistant Staff Counsel, The Florida Bar, Tampa Airport Marriott Hotel C-49, Tampa, Florida 33607; this 25th day of January, 1996.

Edward B. Rood

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RESPONDENT