IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,
In re.
DAVID S. NUNES.

Case No. 84,097

PETITIONER'S PRINCIPAL BRIEF

on

PETITION TO TO REVIEW
FINDINGS OF THE REFEREE

Fla. Bar No. 94-50,185 (17C)

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PRELIMINARY STATEMENT

The Petitioner herein, David S. Nunes, was the Respondent below, and shall hereinafter be called either "Petitioner", or "Nunes". The referee, the Honorable Judge Karen L. Martin, shall be called the "Referee". The complaining witness in this proceeding was attorney Maurice M. Garcia, and shall be called "Garcia".

STATEMENT ON JURISDICTION

In attorney disciplinary proceedings, the Florida Supreme Court has jurisdiction to review the report of the referee on the petition of any party as a matter of right, under the *Rules Regulating the Florida Bar*, Rule 3-7.7(a); (c)(1).

STANDARD and SCOPE OF REVIEW

Referee fact findings in disciplinary cases enjoy the same presumptions of correctness as adjudications in civil suits, and petitioners must demonstrate that a report is erroneous, unlawful or unjustified, and/or that fact findings are not supported by competent, substantial evidence. Referees' legal conclusions and recommendations, however, are accorded a lesser presumption and the scope of review is broader, because it is ultimately for this Court to enter an appropriate judgment. *The Florida Bar In Re. Inglis*, 471 So.2d 38, 40 (Fla. 1985).

STATEMENT OF THE FACTS

Representing First Nationwide Bank, the complaining witness, Maurice Garcia, prevailed in foreclosing a mortgage on realty owned by Karl Illes, demised, but only against Andrew Illes, his son, and only of whatever interest he would have had as Karl Illes' sole "heir at law". This was because, and notwithstanding that, Karl Illes had been found testate in a 1989 foreclosure suit on the same mortgage, which was finally adjudicated in favor of *estate interests* following the Bank's failure to substitute Karl Illes after his death *pendente lite*, and of which the later court was never advised. There were no other persons or interests named or served in the later suit; further, two voluntary dismissals in the earlier suit also operated to bar the cause of action against estate interests.

Mr. Garcia nevertheless attempted to oust outstanding estate interests by an over-broad writ of possession[1]; including Amanda Illes, Karl Illes' 10 year old granddaughter and devisee of the subject realty in his [probated] will. Mr. Garcia never attempted to determine beneficiaries, or join any estate interest[2]; service of process was not even published. Mr. Garcia was plainly aware of, and attempting to surreptitiously circumvent his dilemma with estate interests.

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1 The writ directed removal of "all persons", as in Landlord & Tenant. Because the fundamental issue of title is involved in foreclosure, it is respectfully suggested that the Court consider a form for use in foreclosure, only subjecting foreclosed interests to dispossession. The little-used remedy of Fla.R.Civ.P. 1.580 was resorted to by the child and other outstanding interests, but ignored by the sheriff and trial judge.

2 On Mr. Garcia's deposing Andrew Illes, he specifically asked whether Karl Illes' [as of then still unlocated] will devised the subject realty, which Mr. Illes answered "yes", but there was no follow-up regarding who devisees or beneficiaries were, and Mr. Garcia cut-off Mr. Illes' attempt to offer it. Mr. Garcia had actual knowledge that Amanda Illes was in residence and possession at all relevant times.

In the child's behalf, Petitioner appeared at that point moved the trial court on June 9, 1993 to have a guardian or other protection provided for her, and to have her outstanding claim excluded from execution, but the trial judge erroneously refused to exercise jurisdiction[3]. Petitioner therefore petitioned the 4th DCA on Friday, June 11, 1993 to prohibit *completing* execution of the writ of possession against the child; or alternately, for a writ of mandamus to compel the exercise of jurisdiction. Just as the petition was filed that same Friday, a deputy sheriff and a bank agent appeared at the premises to execute the writ. However, on seeing the petition, and since only Andrew Illes was specifically named in the writ/caption, and others obviously resided at the premises, they only symbolically changed the lock on one of 4 entry-doors; left all possessions and pets inside; only instructed Andrew Illes to vacate; and did not post the premises - i.e., the execution was not completed [and prohibition remained a viable remedy].

Petitioner therefore instructed that Amanda should retain possession and remain in residence with her grandmother, Helen Benis [Karl Illes' ex-wife, to whom he had devised a life-estate]. On Monday, June 14, 1993, the DCA entered a show cause order on the prohibition petition[4]. Petitioner immediately advised Mr. Garcia of the DCA's stay but Mr. Garcia said his case was over, he was "out of it", and that Petitioner would have to deal directly with Little & Co., the Bank's removal agent, and provided the name Mr. Ray Nerdin and Little & Co's "800" number. Petitioner immediately called him and advised of the DCA's stay.

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[3] Andrew Illes had filed a notice of appeal from the final judgment, which the trial judge felt deprived him of jurisdiction, although no stay was in force.

[4] It is most significant that no party Mr. Garcia ever represented a party to this original prohibition/mandamus suit; and that the exclusive subject matter of Mr. Garcia's prior representation was foreclosure of Andrew Illes' interests ---- the subject matter of this petition tested the trial court's jurisdiction over Amanda Illes.

Mr. Garcia confirmed the conversation by letter of June 16 stating, however, that the stay would not be honored and restated that Petitioner should deal directly with Mr. Nerdin. Mr. Garcia "cc'd" the letter to Mr. Nerdin, as well as a Ms. Gina Sherman, showing Little & Co.'s "800" number for both persons, creating the clear impression that Ms. Sherman was also a Little & Co. employee. Significantly, Mr. Nerdin and Ms. Sherman thus necessarily knew of each other, at least through Mr. Garcia's letter, and were expecting contact from Petitioner.

Petitioner again phoned Mr. Nerdin, got his fax number, and asked if it was also good for Ms. Sherman, and Mr. Nerdin advised she had to be reached at another number, and switched Petitioner to a lady who provided it. On June 25, 1993, Respondent wrote to Mr. Garcia and faxed copies to both Mr. Nerdin and Ms. Sherman. The letter expressed *intent* to copy the Bank, but Petitioner did not yet know anyone there to send it to, and so did not *knowingly* copy it to the Bank[5], and significantly, the letter in fact does *not* indicate a "cc" to the Bank.

The letter does criticize Mr. Garcia's handling of the case, but that was the basis of the prohibition petition, and it primarily strongly asserted Amanda Illes' position that the 4th DCA's stay prohibited any further action against her, and that appropriate sanctions would be sought if the stay was nevertheless violated[6].

The Report Of Referee completely overlooks that the subject letter dealt with the distinct prohibition proceeding -- *not* the earlier foreclosure suit, in which Mr. Garcia had represented First Nationwide Bank.

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[5] Five days later, Petitioner determined the Bank president's identity and address, and long-arm served him with a quiet title action against the Bank in Amanda's behalf. Thereafter, there was no point in copying the letter to the Bank.

[6] Mr. Garcia got the petition dismissed as moot by falsely assuring that the writ of possession was completely executed on June 11, before the show cause order. The DCA refused rehearing, including to consider the alternate mandamus remedy.

By letter of June 25, 1993, Mr. Garcia surprisingly announced Ms. Sherman was his "client representative" with First Nationwide Bank, and then complained to the Florida Bar, *inter alia*, that by copying Ms. Sherman with the June 25, 1993 letter, Petitioner violated the prohibition of knowingly communicating with his client about the subject of his representation without his consent.

Mr. Garcia admitted that Ms. Sherman's name was not mentioned, never appeared on any paper, and had in no other manner arisen in the 5-year history of the litigation, prior to his naming her together with Mr. Nerdin in his June 16 letter; with the same "800" number (See e.g., Disc. Comm. transcript, P. 12 lines 8 to 12). Moreover, the only description of Ms. Sherman's capacity was as Mr. Garcia's "client contact" or "client representative" with/of the Bank, which could be an outside contractor; more specifically, there was no evidence that Ms. Sherman had "**managerial responsibility on behalf of**" the Bank.

With no apparent attempt to depose either Ray Nerdin or any other Little & Co. employee who might have had direct knowledge, the Bar instead deposed only Ralph Little, owner of Little & Co., who merely testified his company's policy was to not give client phone numbers in response to foreclosure inquiries, and that *he* had not dealt with, or know of, Ms. Sherman. The Bar did not ask if Mr. Garcia's June 16 letter might have effected that policy, by authorizing contact as well as alerting Mr. Nerdin of Ms. Sherman, assuming he didn't already know her.

There was no evidence, not even a suggestion, of how or where *else* Petitioner could *possibly* have gotten Ms. Sherman's "fax" number, other than as he consistently maintained; from Little & Co.

STATEMENT OF THE CASE

On a two (2) Count complaint by the Florida Bar against Nunes, the referee did not sustain Count II, but sustained Count I; violating DR 4-4.2, communicating with a person Petitioner knew to be represented in a matter by another attorney about the subject of the representation, by order dated on December 21, 1994. Ten (10) day's suspension with automatic reinstatement, followed by 18 months' probation and passing the ethics portion of the Bar Exam was recommended as discipline, and costs of $1,642.41 on both Counts were taxed. The referee found no mitigating factors, but did find aggravating factors (at P. 8);

> 9.22(f) Submission of false evidence, false statements or other deceptive practices during the disciplinary proceeding (as evidenced by the respondent's differing and inconsistent explanations for communicating with Mr. Garcia's client without consent).
>
> 9.22(g) Refusing to acknowledge wrongful nature of conduct (as evidenced by the respondent's personal attacks on Mr. Garcia and various other persons during the course of the proceeding).
>
> 9.22(i) Substantial experience in the practice of law (The respondent was admitted to the Florida Bar on October 23, 1980.)

Petitioner filed a legally sufficient and well-founded motion for rehearing January 5, 1995, which was summarily denied on January 9, 1995, without awaiting a response by the Florida Bar. The Bar did in fact serve a response on January 10, 1995, conceding one rehearing ground; error in taxing costs of both Counts, where only one Count was sustained.

The Bar's Board of Governors sustained the referee, indicating that the Bar would not appeal, and this petition for review was filed.

SUMMARY OF ARGUMENTS

I - DR 4-4.2 IS NOT VIOLATED UNLESS A COMMUNICATION WITH ANOTHER LAWYER'S CLIENT RELATES TO THE SUBJECT MATTER OF THE REPRESENTATION

Mr. Garcia represented First Nationwide Bank in a foreclosure suit against Andrew Illes, which he claimed had been terminated by the time the subject communication took place. The referee overlooked that the communication here did not relate to foreclosure, but rather, to a prohibition/mandamus suit in the 4th DCA against the trial judge, testing his jurisdiction to dispossess a holder of an outstanding estate interest and devise.

II - THERE WAS NO EVIDENCE OF PETITIONER'S KNOWLEDGE THAT MS. GINA SHERMAN WORKED FOR A REPRESENTED PARTY

The evidence was that Ms. Gina Sherman was mentioned for the first time by being "cc'd" in Mr. Garcia's letter of June 16, 1993, which did not identify her as an employee of his client bank, and gave the same "800" number for Ms. Gina Sherman as for Mr. Ray Nerdin of Little & Co., which Mr. Garcia specifically authorized direct contact with. There was no evidence at all that Petitioner knew Gina Sherman worked for the client bank to refute his contrary claim.

III - THERE WAS NO EVIDENCE THAT MS. SHERMAN HAD A MANAGERIAL CAPACITY; AN ESSENTIAL ELEMENT OF VIOLATION UNDER DR 4-4.2

In the case of an organization, DR 4-4.2 only prohibits an unauthorized communication with a person in a managerial capacity [and other circumstances not pertinent]. There was no evidence of Ms. Gina Sherman's capacity, or that she

was employed by Mr. Garcia's client bank in *any* capacity. Alternately, even if there had been evidence of her capacity, there was no evidence that Petitioner knew it prior to the subject communication.

IV - SUMMARY DENIAL OF REHEARING WAS ABUSE OF DISCRETION, AND TAXING COSTS OF THE ENTIRE MATTER WAS ERROR

There is no apparent authority for summary disposition of [non-agreed] matters in disciplinary proceedings. The Referee summarily denied rehearing 4 days after service, before the Bar response was even filed, which conceded one asserted ground. Further, although the Referee only sustained one of two counts charged, but improperly taxed costs related to both counts. This error was conceded by the Bar in its response to Petitioner's rehearing motion.

V - THE RECOMMENDED DISCIPLINE IS IN ANY EVENT EXCESSIVE AND UNREASONABLE

In other disciplinary cases involving the same violation, comparable and in some respects, even lesser, sanctions were imposed for clearly proven and far more egregious conduct.

ARGUMENTS

I - DR 4-4.2 IS NOT VIOLATED UNLESS A COMMUNICATION WITH ANOTHER LAWYER'S CLIENT RELATES TO THE SUBJECT MATTER OF THE REPRESENTATION: THE SUBJECT ONE DID NOT

Foremost, the Report Of Referee completely overlooks that the subject letter related to an original prohibition/mandamus suit against the trial judge, where Mr. Garcia's client was *not* a party -, and *not* to an earlier, terminated, foreclosure suit in which he did represent First Nationwide Bank.

Mr. Garcia represented First Nationwide Bank in a mortgage foreclosure suit against Andrew Illes alone, which terminated in a final judgment on or about October 14, 1992; foreclosing only his interests as "heir at law", and those flowing from or through him. Mr. Garcia maintained that that suit terminated on June 11, 1993, and he was no longer involved. Petitioner then filed a petition for a writ of prohibition or mandamus with the 4th DCA on Friday, June 11, 1993 to test the trial court's jurisdiction to oust his minor client, Amanda Illes, the [then] 10 year-old devisee of the subject realty, from possession, but whose claim and interest was outstanding. On Monday, June 14, 1993, the DCA issued an order to show cause in prohibition, which Mr. Garcia indicated would not be honored as prohibiting her ouster by his letter of June 16, 1993. No party represented by Mr. Garcia was a party to this original suit in the 4th DCA.

The subject communication was a June 25, 1993 letter by the Petitioner to Mr. Garcia which stated the reason for the prohibition petition as strong exception to his handling of the foreclosure suit, and affirmed Amanda Illes' position that the DCA's show cause order prohibited any further attempt to oust her of possession.

DR 4-4.2 prohibits contact with a person known to be represented in the matter regarding the subject of representation. In this case, First Nationwide Bank was firstly neither a party to the prohibition, nor represented "in the matter" by Mr. Garcia. But most importantly, the letter clearly related to the subject matter of the prohibition suit - not the prior foreclosure suit.

The "subject of representation" in the foreclosure suit in which Mr. Garcia represented First Nationwide Bank was Andrew Illes' title alone: In the prohibition case, the "subject" was, and could as a matter of law only be, the trial judge's jurisdiction; and in which the Bank was not a [represented] party.

Unless DR 4-4.2 is to now be extended to prohibit a lawyer from contacting anyone in any case just because they might have been *previously* represented in some other suit where the same interest may have been involved, the referee erred in finding guilt, and should be overruled. Her overlooking the legal distinctions between the foreclosure and prohibition suits should also be reversible.

II - THERE WAS NO EVIDENCE OF PETITIONER'S KNOWLEDGE THAT MS. GINA SHERMAN WORKED FOR A REPRESENTED PARTY

This point involves the referee's finding of fact, which is to be accorded a presumption of correctness and upheld unless clearly erroneous or without support in the record. *The Fla. Bar v. Vannier*, 498 So.2d 896 (Fla. 1986); *The Fla. Bar v. Hooper*, 507 So.2d 1078 (Fla. 1987). An essential element of DR 4-4.2 is that a lawyer *knows* that a person contacted is represented, and the referee's finding of such knowledge is both clearly erroneous and without support in the record.

In this case, it was conceded that the first mention of Gina Sherman was by Mr. Garcia's having "cc'd" her in his June 16, 1993 letter, with no indication that

she worked for First Nationwide Bank. In fact, by authorizing direct contact with Mr. Nerdin of Little & Co. and copying him together with Ms. Sherman - showing the *same* Little & Co. "800" number for both of them, he created the impression they both worked for Little & Co., and that is exactly what Petitioner assumed when he copied her. Petitioner from the outset maintained he did not know who she was [i.e., what her relationship to the matter was], and there was absolutely no evidence to the contrary. Most importantly, there was not even a *theory* of how Petitioner *could* have known that Gina Sherman worked for the Bank at the time.

The referee misinterpreted Petitioner's statements of how and why he got her fax number to copy the June 25, 1993 letter to her, imputing knowledge of her employment by misperceiving "inconsistencies". In paragraph 19 of the Report of Referee, she also concluded that because Petitioner's asserted a duty to copy First Nationwide Bank, he necessarily knew that Gina Sherman worked there, which would be inconsistent with his denial of knowing who she was. However, one has nothing to do with the other. Petitioner did *intend* to copy the bank, and would have been so justified in the circumstances[7], but that does *not* automatically mean that the copy to Gina Sherman was intended to accomplish it, and significantly, the letter accordingly does *not* specify a "cc" to the Bank.

Further, the "inconsistent" explanations the Report Of Referee outlines in Paragraphs 18, 20, 21 and 22 were not in fact inconsistent at all: Mr. Garcia provided her name and an "800" number; Mr. Nerdin at that number provided her direct "fax" number through a [presumably] receptionist. Even if the referee saw a credibility issue, she would still have had to resolve the touchstone of "knowledge"

[7] The June 25, 1993 letter specifically referenced the DCA case, not the foreclosure suit: The 4th DCA had stayed action, and Mr. Garcia said it would not be honored: First Nationwide Bank was not a [represented] party to the prohibition action, and a contempt would otherwise be commited - and a child's illicit dispossession.

in Petitioner's favor, because there was no contrary evidence to refute it. Innuendo and speculation are not evidence.

Even if Petitioner's explanations of how he got Gina Sherman's fax number and why he copied the June 25 letter to her *had* been patently self-contradictory, which they were not - the issue here was not how he got her number or why he copied her: The issue was whether he knew she worked for First Nationwide Bank. This was clearly an "apples and oranges" situation which hardly supports the Referee's finding in Paragraph 23, that "The evidence is clear and convincing that respondent knowingly communicated with Attorney Garcia's client without Attorney Garcia's consent." At *most*, they reflect Petitioner's West Indies heritage manifested in disjointed and inexact expressions, as any transcript clearly shows.

Further, Petitioner knew of the unique nature of disciplinary proceedings, e.g., *The Fla. Bar v. Weed*, So.2d 1094, 1095 (Fla. 1990); *DeBock v. State*, 512 So.2d 164 (Fla. 1987), and mistakenly believed that there was no right of counsel. As the Report Of Referee notes, Petitioner's counsel was under suspension, and he accordingly proceeded *pro se*. That burden and inherent loss of objectivity also account for much of what the referee mistook for dishonesty.

In both reported "communicating with another lawyer's client" cases, there was admission or *clear*, on-point evidence. In *The Fla. Bar v. Shapiro*, 413 So.2d 1184 (Fla. 1982), the lawyer pleaded guilty to the charge, and in *The Fla. Bar v. Hooper, Supra.*, the lawyer phoned the adversary directly about a disputed debt, after admittedly receiving a letter from its attorney demanding payment, *Id*, 1079. There is not a scintilla of evidence in this record indicating Petitioner *could* have known that Gina Sherman worked for the bank on June 25, 1993; or even how or where he could have discovered it, other than as he consistently asserted.

The Bar offered Mr. Ralph Little's deposition, in which he said his company's policy would not allow giving out a client's number on a foreclosure inquiry, and that he had non heard of Gina Sherman. There was no evidence, not even an affidavit, from either Mr. Nerdin or anyone in his office to whom he might have switched Petitioner's call for Ms. Sherman's number, as Petitioner asserted. Nor did Bar ask about the effect on policy of Mr. Garcia's letter not only alerting Mr. Nerdin of Ms. Sherman, if he did not already know her, but also expressly authorizing contact. His testimony was therefore neither relevant nor conclusive. Even assuming nobody at Little & Co. had ever heard of Ms. Sherman prior to Mr. Garcia's June 14, 1993 letter, as the Bar apparently intended to show through Mr. Little's deposition, it is nevertheless reasonable to assume that Mr. Nerdin would have wondered who she was *after* Mr. Garcia's letter, as well as that he would likely have taken steps to find out by the time Petitioner called.

It should be plain that there were no facts supporting the Referee Report regarding whether or not Petitioner knew that Gina Sherman worked for First Nationwide Bank. The Report must accordingly be overruled.

III - THERE WAS NO EVIDENCE THAT MS. SHERMAN HAD A MANAGERIAL CAPACITY; AN ESSENTIAL ELEMENT OF VIOLATION UNDER DR 4-4.2

The notes to DR 4-4.2 clarify that before there is a violation thereunder, in the case of an organization which First Nationwide Bank clearly is, the person communicated with must have a "**managerial responsibility on behalf of the organization**" Ms. Gina Sherman's capacity was only identified as Mr. Garcia's "client contact" or "client representative" with First Nationwide Bank. That does not even necessitate employment by the Bank; much less imply that she had any

"managerial responsibility". And even if there had been evidence that Petitioner knew she worked for the Bank, there was no evidence he knew her position.

This is a legal issue as well, which this Court reviews *de novo*. See *The Fla. Bar In Re. Inglis*, Supra. The referee must accordingly be reversed either under a lack of evidence standard, or as a matter of law on *de novo* review.

IV - SUMMARY DENIAL OF REHEARING WAS ABUSE OF DISCRETION, AND THE REFEREE ERRED IN TAXING COSTS OF THE ENTIRE MATTER

After receiving the referee's report, Petitioner timely moved for rehearing, pointing out many errors and fundamental oversights as also presented in this appeal. The referee summarily denied the motion 4 days after *service*, without even awaiting a response from the Bar. There is no apparent authority whatever for such summary disposition, absent which the referee's denial would constitute a due process deprivation and abuse of discretion. One of the grounds for rehearing was that the referee had erroneously taxed costs in both counts, where she only sustained one. Ironically, the Bar did file a response, and conceded error in the referee's taxing costs. Further, costs incidental to the Ralph Little deposition should have been rejected for utter lack of relevance and/or probative value.

Plainly, the referee had denied rehearing without even considering the merits of the motion, and the matter should be remanded for evidentiary hearing, if she is not reversed entirely here. In any event, her cost award must be reversed and/or examined *de novo*.

V - THE RECOMMENDED DISCIPLINE IS IN ANY EVENT EXCESSIVE AND UNREASONABLE

In this case, there were nothing but presumptions, inferences and speculation that Petitioner "knew" Gina Sherman worked for the Bank, on the fact side - and unclear and unsettled law about whether, even if he had known, a communication which related to a new and distinct matter in which the Bank was not a party or represented would still constitute a violation.

In the *Hooper* case, it was not only undisputable that the lawyer knowingly had communicated with another lawyer's client on the subject of representation, but he had threatened multiple litigation; fraudulently obtained a refund of $426.50 based on disputed work by the adversary (after which, he "gloatingly" mailed the adversary's attorney a thank you card along with a copy of the rebate check, *Id.*, at 1079), in addition to other reprehensible conduct. For that far more egregious conduct, Attorney Hooper only received a 90-day suspension and costs. In this infinitely less grievous and clear case (even if charges were true), Petitioner is to receive not only a 10-day suspension, but 18-months'' probation, and be required to pass the ethics portion of the Fla. Bar Exam on readmission, in addition to costs.

In *Shapiro, Supra.*, the attorney had not only communicated a settlement offer directly to an adversary without the adversary's attorney's permission, which he admitted, but had also placed trust funds belonging to clients in his general account, engaged in law practice under a trade name, paid a salary to a non-lawyer employee based on how much the clinic earned in legal fees, and had also elected a non-lawyer as secretary of the legal clinic. Because Attorney Shapiro had severe personal problems at the time, the referee only recommended a public reprimand and supervised probation for 3 years, passing the ethics portion of the Bar Exam,

and periodic psychiatric examinations. The Bar appealed, and on review, this Court changed the public reprimand and probation, to suspension for 3 months and a day, until he proved rehabilitation, and taxed costs.

Even *The Fla. Bar v. Pahules*, 233 So.2d 130 (Fla. 1970), which the referee was guided by, involved infinitely more egregious conduct, in that the attorney accepted $14,052.37 from the sale of realty, and instead of depositing it in a trust account, he spent the money on personal needs. Additionally, he bounced several trust and personal account checks issued to repay the client.

This case should not even have gotten an evidentiary hearing, and cannot even be said to have involved disputed facts - because there were no "facts" to dispute! Unless it is to now be rule in disciplinary cases that a complaining witnesses' bald and *completely unsupported* fact-assumptions of an intangible like knowledge are to be accorded a probative presumption - just because there is some misapprehension-based suspicion of inconsistency, moreover, regarding completely *unrelated and immaterial* matter(s) - the discipline recommended in this case is at the least blatantly excessive!

Although it would have required parapsychology for Petitioner to anticipate it, given the facts of this case - Petitioner at most might have been expected to ask someone "By the way, Gina Sherman doesn't happen to work for First Nationwide Bank, does she? Mr. Garcia didn't say." For that odious failure, should not a private reprimand, if anything at all, suffice? Does the fact that Petitioner was justifiably outraged at Mr. Garcia's abuse of process and fundamental due process norms and disregard of a stay entered by a district court of appeal *because* of his conduct - warrant any discipline at all, much less the harsh discipline urged here? Should not Mr. Garcia's name be in this caption instead of Petitioner's?

CONCLUSION

The Report of Referee should be reversed. Alternately, the recommended sanction should be rejected or reduced to at most a private reprimand, and in any event, costs as taxed must be rejected.

CERTIFICATE OF SERVICE

I HEREBY CERIFY that a copy hereof was mailed to Mr. John A. Boggs, Director of Layer Regulation, The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-2300, this 4th day of April, 1995.

Respectfully submitted by
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