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IN THE SUPREME COURT OF FLORIDA

FILED
SID J. WHITE
MAY 30 1995
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

THE FLORIDA BAR,

Complainant,

vs.

THOMAS ANTHONY SOFO,

Respondent.
_____/

Case No. 84,133
[TFB Case No. 93-30,655 (10B)]

PETITION FOR REVIEW - treated as Respondent's Initial Brf. also.

Respondent, THOMAS A. SOFO, hereby petitions this Court for review of the Report of Referee, submitted by The Honorable Alice Blackwell White, dated April 26, 1995. This petition is confined to Part IV, Recommendations as to Disciplinary Measures to be Applied. Respondent anticipated that the question of the appropriate discipline would be the subject of a separate stage in the disciplinary proceeding and is somewhat surprised that Respondent has not had the opportunity to address this matter in person as part of the underlying proceedings.

Respondent will not impose upon this Court his deep seated belief that if he could only better explain the surrounding circumstances set forth in the voluminous record in this matter, the infraction of which Respondent has been found guilty by the Referee would at least be understandable, if nevertheless culpable.

Suffice it to say, Respondent acted in good faith, in the heat of the corporate moment, in sending the offending letter to the pre-existing customers of his initial client, Micro-Environmental, Inc (Micro). Respondent acted pursuant to instructions from the President of Micro-Environmental. It did not occur to respondent that the letter, sent after the agreement with New Earth Environmental Technologies, Inc. (NEETCO) had

been rescinded, was more than an administrative announcement of the new status quo, an announcement that was just as likely to emanate from any other officer of Micro.

In the mind of Respondent, his employment with NEETCO was terminated at the same time as the rescission of the NEETCO agreement inasmuch as the agreement itself was the basis for that employment (see Paragraph 11 of the February 10, 1992 Agreement). The conflict which existed was assumed by respondent to be open, known, invited by NEETCO, and waived. The record in this case is replete with numerous instances of Respondent's writings to NEETCO on behalf of Micro.

With the benefit of hindsight, Respondent fully understands that the situation in which he allowed himself to be placed was a minefield of possibly divided loyalties and contradictory duties and obligations. Respondent believes that the provisions of the *Rules Regulating The Florida Bar* which warn practitioners against business entanglements with their clients are well conceived in a way he did not fully appreciate prior to this unhappy experience. In mitigation, once Respondent became convinced that there was an irreconcilable actual conflict, Respondent withdrew, using no more information than he possessed as the attorney for the initial client.

The Referee finds Respondent guilty of an ethical violation and has recommended suspension for a period of one year and payment of costs totalling nearly $2,000.00. Respondent respectfully requests that this Court examine the appropriateness of the suspension recommendation

First, the mere use of the term "ethical violation" has mortified Respondent in a way which may be difficult for this Court to appreciate. Respondent has always prided himself in having a high and uncompromising standard of ethics as well as a sense of

service to the community; a personal standard which has probably kept Respondent from a measure of success because of his reluctance to engage in any conduct which could in any way be questioned, regardless of the financial incentives to do so. To have his ethics impugned is already a very serious punishment in itself to Respondent.

Respondent's ethical standards do not come from the Florida Bar Rules but rather from his parents and upbringing. A recognition that the practice of law requires consultation to those Rules in those instances in which his innate moral compass might otherwise run afoul of the Rules has been one of the lessons learned by Respondent as a result of this process. Simply put, things your mother may have told you may nevertheless require refinement in light of those Rules.

Respondent understands that the *Florida Standards For Imposing Lawyer Sanctions* provides generally for the consideration of mitigating factors in review of the appropriate discipline to be meted out in a given situation. Although Respondent does not have access to the original text of those *Standards*, from references in the cases reviewed by Respondent , Respondent understands that according to Rule 9.32 of the *FSILS*, the absence of a prior disciplinary record (9.32(a)); absence of dishonest or selfish motive (9.32(b)); cooperation with the disciplinary process (9.32(e)); evidence of good character or reputation (9.32(g)); imposition of other penalties or sanctions (9,32(k)); and remorse (9,32(i)) are all relevant to such review.

Respondent acted out of loyalty to his longstanding client (Micro) and a sense of standing up for the underdog in the situation which is under review. NEETCO had resources vastly superior to Micro in numbers, dollars, and information. Respondent did not act out of malice or for personal profit. In fact, the split between Micro and NEETCO ultimately resulted in the failure of Micro, great financial loss to Respondent, and the financial burden and embarrassment of this entire complaint process.

Although Respondent now realizes that it is irrelevant to the charges against him, Respondent believed that he had come to learn that the NEETCO operation was pervaded by securities and tax fraud and generally unethical business practices. In pursuing his course of action, Respondent believed he was standing up for the right values. Respondent simply did not appreciate that his status as an attorney encumbered his ability to be outspoken in pursuing what he honestly believed was an appropriate course of action.

Respondent has practiced law from Alaska to Florida for nearly 20 years. Respondent has done pro bono criminal defense of indigents as well as representing Mrs. Henry Ford, worked *simultaneously* as legislative counsel for *both* political parties of the Alaska legislature (a sensitive situation requiring a high degree of confidentiality), is the author of the Alaska Corporations Code, has been an editor for Martindale Hubbell, has done extensive defense as well as plaintiff's work, has a long history of successful representation of litigants in domestic disputes (a particularly volatile area), has headed the commercial litigation department of one of Florida's most successful law firms (Montgomery, Searcy, and Denny), among other endeavors. There has never been any question in those nearly 20 years of service over the broad variety of situations described, each calling for its own special sense of judgment, that Respondent has faithfully and effectively adhered to the ethical standards of our profession. The prior history of Respondent should be considered in determining the appropriate punishment. See The Florida Bar v. Shupack, 523 So.2d 1139 (Florida 1988).

In brief, Respondent presents all of the mitigating factors cited above. To take away the livelihood of Respondent for one year due to a single error of judgment in what is an otherwise exemplary record is too harsh a sanction. Respondent is the sole support of his family which includes two young children. Even the assessment of costs

will require great sacrifice inasmuch as Respondent has yet to meet with success in the pursuit of the business endeavors initiated during the Micro/NEETCO era. Respondent's appearance at the hearing before the Referee required the financial assistance of third parties. The expenses associated with this disciplinary proceeding have already amounted to several thousand dollars of out of pocket expenses as well as thousands of more dollars of Respondent's time.

Respondent has surveyed the relevant historical decisions with regard to the sanctions imposed by this Court in disciplinary matters. There are very few decisions which address errors of judgment in conflict situations, the bulk of the reported decisions seemingly dealing with more clear cut egregious conduct That review convinces Respondent that, in those cases which do not involve incompetence, negligence, malice or dishonesty, or a pattern of misconduct it is not generally the policy of this Court to impose such a harsh sanction. A public reprimand seems to be the appropriate discipline for an isolated instance of a lapse in judgment. The Florida Bar v Price, 569 So 2d 1261 (Florida 1990). See also The Florida Bar v. Belleville, 529 So. 2d 1109.

This Court has the inherent power to apply a broader review to the Referee's recommendation of the appropriate discipline than the review otherwise appropriate to her findings of fact.. The Florida Bar v Niles, 644 So. 2d 504 (Florida 1994). Its inquiry should be broad enough to weigh whether the punishment is fair to society, fair to the Respondent, and severe enough to deter others. Respondent submits that a reprimand is sufficient sanction to serve the range of interests identified.

Finally, the underlying dispute between the principals of Micro and NEETCO was the subject of very expensive and time-consuming litigation which imposed additional costs upon Respondent. The litigation was settled in the Summer of 1993 to the

satisfaction of the parties to that litigation, which included both the respondent and the initial individual complainant in this matter, Joseph Nolan, as individual parties to the civil dispute. No direct or indirect remediative purpose is served by imposing further penalties upon Respondent.

As to the lesson learned, which is arguably another relevant public policy purpose served by such disciplinary proceedings, this Respondent has learned his lesson well and can promise with the utmost confidence that this Court and he will never have occasion to revisit such matters throughout the balance of Respondent's career.

Respectfully submitted this 26th day of May, 1995.

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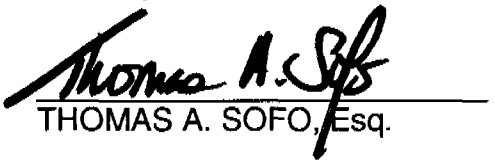
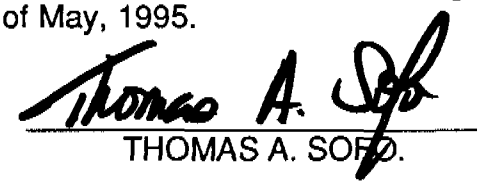


THOMAS A. SOFO, Esq.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that an original of the foregoing Petition For Review has been furnished by regular U.S. Mail to Sid J. White, Clerk of Supreme Court of Florida, Supreme Court Building, 500 South Duval Street, Tallahassee, FL 32399-1927, and a copy of same to John B. Root, Jr., Bar Counsel, at 880 North Orange Avenue, Suite 200, Orlando, FL, 32801 this 26th day of May, 1995.



THOMAS A. SOFO.