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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant-Appellant,

v.

BRUCE IRA KRAVITZ,

Respondent-Appellee.

Supreme Court Case Nos.
Nos. 84,380 & 84,973

The Florida Bar File
Nos. 94-50,362 (15C)
and 94-50,214 (15C)

RESPONDENT'S ANSWER BRIEF

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PRELIMINARY STATEMENT

Respondent/Appellee, BRUCE IRA KRAVITZ, will be referred to as "Appellee" or as "Kravitz." Petitioner/Appellant, THE FLORIDA BAR, will be referred to as "Appellant" or as "The Bar." The symbol "R" will be used to designate the report of the referee, Circuit Judge J. Leonard Fleet of the Seventeenth Judicial Circuit.

STATEMENT OF THE CASE AND FACTS

Following a day long hearing held in Gainesville, Alachua County, Florida, the referee issued a report finding the Appellee's conduct had violated the Rules Regulating The Florida Bar. (R-18) The referee's report was extremely articulate and factually detailed. (R-1 - R-19) Accordingly, rather than accepting Appellant's version of the evidence below, Kravitz urges this Court to base its decision solely on the facts related so fastidiously by the referee in his report.

Upon hearing all of the evidence and arriving at his detailed factual findings, the referee affirmatively found that Kravitz "was not an evil person" but rather that "[h]e had a vested interest in the success of the [corporation which he was representing] which militated against the maintenance of professional detachment and objectivity." (R-19) Furthermore, the referee found that "neither disbarment nor suspension [of Kravitz] will serve the greater good of the judiciary, The Bar, or the public" and that "[Kravitz] does not now pose a danger to the integrity of our profession or the clients he may represent in the future." (R-19) Accordingly, the referee recommended that Kravitz should be placed on probation for at least a year, should attend a refresher course in professional ethics, and should be required to pay the costs of the disciplinary proceedings. (R-19)

SUMMARY OF ARGUMENT

A referee's recommendation on discipline is afforded presumption of correctness unless the recommendation is clearly erroneous or not supported by the evidence. *The Florida Bar v. Poplack*, 599 So. 2d 116, 118 (Fla. 1992). In the instant case, the referee made detailed factual findings, with which The Bar does not argue, and also affirmatively recognized that Kravitz' conduct did not warrant suspension or disbarment. Rather, the referee indicated that the evidence, including Kravitz' own testimony, demonstrated that his conduct was aberrant and not susceptible of repetition. Thus, the evidence supports the referee's disciplinary recommendation and such recommendation should be upheld by this Court.

ARGUMENT

- I. THE REFEREE'S RECOMMENDATION THAT APPELLEE BE PLACED ON PROBATION FOR A PERIOD OF YEARS, ATTEND A COURSE ON PROFESSIONAL ETHICS, AND PAY THE COSTS OF THE DISCIPLINARY PROCEEDINGS IS ENTITLED TO A PRESUMPTION OF CORRECTNESS AND, IN ANY EVENT, IS APPROPRIATE BASED UPON THE EVIDENCE.

While this Court has stated that it has the ultimate responsibility to order the appropriate punishment in attorney disciplinary proceedings, it has also indicated that a referee's recommendation of discipline is to be afforded a presumption of correctness unless the recommendation is clearly erroneous or not supported by the evidence. *The Florida Bar v. Roberts*, 626 So. 2d 658, 659 (Fla. 1993); *The Florida Bar v. Poplack*, 599 So. 2d 116, 118 (Fla. 1992) citing *The Florida Bar v. Lipman*, 497 So. 2d 1165; 1168 (Fla. 1986). In *Poplack*, the referee recommended that attorney Poplack receive a thirty-day suspension followed by a period of probation for lying to a police officer. *Poplack*, 599 So. 2d at 116. Similar to the case *sub judice*, The Bar in *Poplack* did not challenge the referee's factual findings but claimed that the referee had erred in recommending a thirty-day suspension rather than a ninety-one day suspension. *Id.* at 117. This Court held that the referee's recommendation of discipline was entitled to a presumption of correctness and imposed the discipline recommended by the referee. *Id.* at 118-119. In the instant case, the referee found that Kravitz made misrepresentations to the court regarding his status as an officer of a corporation he was

representing in litigation being conducted in Alachua County and relating to an agreement or lack thereof with opposing counsel as to the propriety of certain proposed orders submitted to the court. (R-16 - 18) The Bar does not challenge Judge Fleet's factual findings but contends that Kravitz should receive a ninety-one day suspension from the practice of law rather than the probation and ethics training recommended by the referee.¹ On the other hand, Appellee submits that in light of the presumption of correctness that attaches to the referee's recommendation as to discipline, this Court should uphold such recommendation and order that Kravitz be placed on probation for one to two years, attend and successfully complete a course in professional ethics, and pay the costs of the disciplinary proceedings. Such discipline would be in accord with other attorney disciplinary cases involving misrepresentations decided by this Court. See *Poplack*, 599 So. 2d 116 (lying to police officer warranted thirty-day suspension and probation); *The Florida Bar v. Farinas*, 608 So. 2d 22 (Fla. 1992) (fraudulent notarization which violated the rules of conduct relating to fraud, deceit, and misrepresentation, as well as other rules of conduct, warranted public reprimand); *The Florida Bar v. Rose*, 607 So. 2d 394 (Fla. 1992) (conduct involving misrepresentation warranted thirty-day suspension). In the case at bar, the referee's disciplinary recommendation is amply supported by his finding that:

¹ The Bar fails to mention that Kravitz has had absolutely no opportunity to present evidence of mitigation.

Notwithstanding the very serious nature of the errors committed by Respondent, your Referee is convinced he is not an evil person. Respondent, for pecuniary reasons, became involved in business with his client. He had a vested interest in the success of the operation which militated against the maintenance of professional detachment and objectivity.

Based upon your Referee's observation of Respondent during the disciplinary proceedings, there does not appear to be a great likelihood of repetition of conduct similar to what has been here described. Neither disbarment nor suspension will serve the greater good of the judiciary, The Bar or the public. Assuming he was so predisposed before these proceedings occurred, Respondent does not now pose a danger to the integrity of our profession or the clients he may represent in the future.

(R-19) (Emphasis added)

Because The Bar has not demonstrated that the discipline recommended by the referee is clearly erroneous or is not supported by the evidence adduced at the disciplinary hearing, this Court should uphold the referee's recommendation.

CONCLUSION

Based upon the foregoing, Appellee, BRUCE IRA KRAVITZ, respectfully submits that the recommendation of discipline made by the referee below is supported by the record and entitled to a presumption of correctness. Accordingly, this Court should order discipline consistent with the referee's recommendation. In the event that the Court determines that suspension of Appellee from the practice of law is warranted, Appellant respectfully requests the opportunity to present evidence in mitigation of his misconduct prior to the imposition of such suspension.²

DATED this 26th day of April, 1996.

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² Appellee assumes that the opportunity to present mitigation evidence would necessitate a remand to the referee for this limited purpose.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States Mail to:

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