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DEC 28 1995
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IN THE SUPREME COURT OF FLORIDA

(TFB File Nos. 94-00728-03, 94-00933-03, and 94-01105-03)

THE FLORIDA BAR,

Complainant, Respondent,

vs.

Case Nos. **84,493** and **85,243**

ROBERT JOHN SCHRAMM, ESQ.,

Respondent# Petitioner.
_____/

REPLY BRIEF IN SUPPORT OF ROBERT JOHN SCHRAMM, ESQ.'S PETITION FOR REVIEW OF REFEREE'S REPORT AND RECOMMENDATION

On direct review to this honorable court from the recommendation of the Referee, Hon. John E. Crusoe, Circuit Judge, Rendered in TFB File Nos. 94-00728-03, 94-00933-03, and 94-01105-03, on July 24,1995.

Baya Harrison, III, Esq.
Counsel for Respondent/ Petitioner,
Robert John Schramm, Esq.
Post Office Box 6S6
Monticello, FL 32345-0656
(904) 997-8469
Fla. Bar No. 099568

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As to the Florida Bar's Statement of the Facts

On page 2 of its answer brief, tlie Florida Bar notes that it "would augment Respondent's statement of the facts..." Thus, it is clear that it does not take issue with or dispute the correctness of the statement of the facts as set forth on pages 2-8 of Mr. Schramm's initia1 brief. We will therefore continue to stand on those facts.

We take exception to only a few aspects of the Florida Bar's statement of tlie facts as noted below:

TFB File No. 94-00728-03

The record is not clear that "Respondent lied to Judge Stancil during a cubsequent telephone conversation regarding the Motion for Continuance" as claimed (without citation to the record) by the Florida Bar on pages 3, 4 of its answer brief. We have admitted in this regard that Mr. Schramm made a false statement in that motion for continuance.

TFB File No. 94-01105-03

The Florida Bar's contention (page **4** of its answer brief) that "Ms. Powell had received a certified money order from her brother to pay off the loan on her home" is incorrect in that the "money order" was bogus on its face. (Cee Respondent's Exhibit *3* in evidence at the hearing before the Referee.) To suggest that the ""money order" was any kind of a legitimate monetary instrument or that it was "certified" in the sense that it had any validity whatsoever -- is to seriously misstate the reality of the situation.

The Florida Bar's statement on page **4** of its answer brief that "Respondent took no steps to find out if the certified money order Ms. Powell had presented to the holder of tlie note and mortgage was negotiable or if there was some other procedure which had to be followed with respect to it" is beside the point. Ms.

Powell knew the "money order" was bogus having been advised of that fact by the note holder and because she was clearly involved in a scheme to defraud. Whatever other lapses in serving Ms. Powell Mr. Cchramm may have committed notwithstanding, it is a waste of time and effort to suggest that he had any duty to advise this lady of what she obviously already had to know. (Cee the Transcript of Hearing before the Referee, page 64, and pages 7, *8* of the initial brief.)

As to the Florida Bar's Argument

The Florida Bar's Argument I

The Florida Bar answers Mr. Cchramm's first point on appeal by ignoring then dancing around it on pages 9-15 of its answer brief.

ïhe undisputed fact remains that with regard to TFB File No. 94-00727-03, the Florida Bar did not charge Mr. Cchramm with a violation of Rule 4-8.4(b), Rules Regulating the Florida Bar, which provides that "a lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness of a lawyer in other respects." (Cee the 10/11/94 Complaint filed by the Florida Bar, pages 3,4.) Nor did it present any evidence at the hearing before the referee to the effect that he committed a criminal act in the course of communicating with Judge Stancil. The Florida Bar does not make that assertion in its answer brief. It cannot because it is not true.

Yet in its written final argument presented to the referee, the Florida Bar falsely advised the referee that "respondent has admitted through his pleadings that he has violated...4-8.4(b) (a lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." (See the Florida Bar's Written Closing Argument, pages 4,5.) This was the first time that such a serious assertion against Mr. Cchramm had been made in the proceediigs before the referee. Again, as stated on page 12 of our initial brief, under

no circumstances do we suggest that Bar counsel did this intentionally -- it was an honest mistake. But the reason the referee's recommendation must be rejected is that the referee accepted and adopted the Florida Bar's terribly false assertion hook, line and sinker. Thus in his report and recommendation, the referee simply copied the Bar's claim stating that Mr. Cchramm "...has admitted through his yleadings that he has violated..4-8.4(b) (a lawyer shall not cominit a criminal act..." (Cee the Report of Referee, pages 6,7.)

The Florida Bar suggests that the grievous errors made by the Bar and the referee are not that important because there was other substantial evidence to sustain the referee's ultimate recommendation. The **Bar** also suggests that Mr. Schramm merely wants this honorable court to substitute its judgment for that of the referee. That is incorrect and begs the question.

Mr. Schramm does not ask this honorable court to review the facts and circumstances of his case de novo. He seeks review of the referee's findings and recommendations in the context of whether they were significantly in whole or in part "**erroneous,** unlawful or unjustified." Rule 3-7.7(c)(5), Rules Regulating the Florida Bar. How else other than "erroneous" can those findings and lus recommendation be described when it is crystal clear that he made a finding (that Mr. Schramm had committed a criminal act) that even the Bar admits **simply is not true.** Stated slightly differently, can this honorable court dctermine from the record that Mr. Cchramm was afforded a fair, sustantially error free and independent review of the facts and circumstances by the referee -- or does it appear that the referee's report is tainted because it relied far too much on the Bar's flawed rendition of Mr. Cchramm's alleged wrongdoing? Can this honorable court find that the referee would have recommended a 91 days suspension had he not been laboring under the utterly false impression that Mr. Cchramm was a criminal?

Because we believe the answer to the above questions is obvious, we **ask** this court to reject the referee's findings and recommendations, and remand the matter to the referee for a corrected recommendation excluding any finding that Mr. Schramm had committed a crime.

The Florida Bar's Argument II

In point II of the Florida Bar' argument (pages 17-23 of its answer brief), it is alleged that we ignored the applicable standards for imposing lawyer sanctions. That is not correct for it is the Bar that has ignored those standards and the case law interpreting them -- as those standards and the cases apply to the real facts in this case. This is so because the Bar continues to avoid dealing with the fact that by far the worst thing that Mr. Schramm **supposedly** did according to the referee was **commit a crime** -- and the Bar knows that **this did not happen.**

It must be noted that Mr. Schramm does not contend that he should be exonerated for the wrongful acts that he acknowledges he committed. He fully admitted his wrongdoing from the beginning of these proceedings and expects to be sanctioned. But the question is the extent of the sanctions. Can this court determine from the record with any degree of confidence whether the referee would have recommended a more than 90 days suspension if he had not been mislead into believing that Mr. Schamm was a criminal? That is the issue and that is why the referee's recommendation must be rejected and the cause remanded to him.

As far as the case law cited by the Florida Bar is concerned, we discuss virtually each case cited in the answer brief on pages 12-21 of our initial brief and therefore will not repeat that effort here. In the course of discussing those cases in our initial brief, we go into much more detail than the Bar does -- and demonstrate

why many of them do not apply to the facts in the case at bar.

We also show how the Bar could have caused confusion for the referee when it cited many of the cases in its written final argument biit failed to set forth the particular facts contained therein. (Cee pages 12-20 of our initial brief.) The Bar does the same thing here with regard to its rendition of the facts regarding **The Florida Bar v. Colclough, 562** So.2d **1147** (Fla. 1990)and **The Florida Bar v. Kickliter,** 559 So.2d 1123 (Fla. 1990). We discuss the actual facts of those cases on pages **14** and 17-19 of our initial brief.

CQNCLUSION

For the reasons set out above, this honorable court is requested to reject the report and recommendation of the referee, remand the cauce to the referee requiring him to reconsider the matter absent the finding that Mr. Schramm had committed a crime, and/or sanction Mr. Cchramm by sucpension for less than 90 dayc from the practice of law.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been furnished J o h McCarthy, Esq., The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-2300, by hand delivery this 28th day of December, 1995.

Respectfully Submitted,

Baya Harrison III, Esq.
Baya Harriso
PO Box 656
Monticello, FL 32345-0656
904/997-8469
Fla. Bar No. 099568