IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

MICHAEL CARR NORVELL,

Respondent.
_____/

Case No. 86,027
[TFB Case Nos. 94-31,482(5B)
and 95-30,134(5B)

MICHAEL CARR NORVELL'S CROSS- REPLY BRIEF

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TABLE OF CONTENTS

SYMBOLS AND REFERENCES

In this brief, the complainant, The Florida Bar, shall be referred to as "The Florida Bar" or "the bar."

The transcript of the final hearing held on November 29, 1995 and November 30, 1995, shall be referred to as "TR" followed by the cited volume and page number.

The Report of Referee dated March 13, 1996, will be referred to as "RR" followed by the referenced page number.

RESPONDENT'S CROSS-REPLY TO ARGUMENT

POINT I

THE REFEREE'S CONCLUSION THAT THE RESPONDENT WAS NOT GUILTY OF VIOLATING RULES 4-1.4(b) AND 4-1.7(b) WAS CLEARLY NOT ERRONEOUS.

Even if the issue is not that the Respondent paid $1,000.00 directly to Jamie Senatore's lawyer, Robert Williams, as a fee earned by Mr. Williams in connection with Mr. Senatore's lawsuit against Forrest Berg (TR I p. 34; TR III p.p. 455-456), with whom the Respondent later developed a lawyer-client relationship (TR I p.p. 181-182), the Respondent's failure to disclose this payment to Mr. Berg when they formed an attorney-client relationship, does not violate Rule 4-1.7(b). Rule 4-1.7(b) requires that "A lawyer shall not represent a client if the lawyer's exercise of independent professional judgement in the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person or by the lawyer's own interest." The Respondent did not represent Mr. Berg at that time and the Respondent did not have any responsibility to a third person (Jamie Senatore) other than paying him for construction done on the Respondent's home. The Respondent was not "obligated to fund the Senatore lawsuit." TR III, p.p. 347-348.

Mr. Berg did not need to know about the Respondent's payment to Mr. Williams as the primary purpose of the payment was not to fund the Senatore lawsuit against Mr. Berg. Contrary to The Bar's assertion in their Reply Brief, page 2, when questioned by Bar

Counsel, Martina Norvell testified that she and the Respondent received a $1,000.00 credit toward the balance owed Mr. Senatore on the construction of their house by paying the money directly to Mr. Williams for Jamie Senatore. TR III P. 339. The Respondent and his wife never agreed to pay the costs of Mr. Senatore's legal proceedings against the Arbors either directly or indirectly, but only to pay money owed to Mr. Senatore for the construction of their home. TR III p.341.

Contrary to The Bar's position set forth on page 4 of its Reply Brief and supported by The Bar's Exhibit #18, Judge Corcoran denied the application of Respondent "for the reasons stated on the record and announced orally in open Court on September 15, 1993." The record reflects that the prior attorney for the Debtor, Royce Pipkins, was never approved by Judge Corcoran. And therefore, the Respondent could not be approved. TR P. 382. Respondent could have made a new application after attorney Pipkins withdrew his application, but instead, hired attorney Richard Hennings and filed with Hennings, a Motion to Substitute Counsel, Bar's Exhibit #19. The Bar's own Exhibit #19 recites in paragraph 13 that Hennings $5,000.00 retainer was paid by Respondent. Henning's Motion (B-Ex.19), shows that The Arbors was aware of this payment by their agreement to pay Hennings independent of Respondent (B-Ex.19).

Contrary to The Bar's assertion in their Reply Brief, page 8, the Respondent did not do more than merely attempt to amend the subdivision restrictions on the minimum square footage and it was **always** conditioned on the approval of Citizens National Bank. The Bar stated in the Reply Brief that the Respondent and Messrs. Berg and Dillard had an informal agreement that the corporation would not build any houses with less than 1,800 square feet and they refer to pages 250-251 of the Transcript. Those pages of the transcript contain the testimony of Thomas Grizzard and the 1,800 square footage mentioned in that testimony is hearsay, and contrary to the Bar's own Exhibit #12. The referee found that Mr. Grizzard did not have much to offer, once it became clear that he was really operating on some misinformation, at least a lot of it. TR, III, P.579. The Bar's Exhibit #12 is a letter to Douglas & Mary Dillard from the Respondent dated August 20, 1993. In that letter, the Respondent mentions raising the square footage minimum to 1,500 not 1,800 feet, **with CNB's approval**. The Bar is correct in its assertion that the Respondent first put the issue of the minimum square footage in writing in a draft of the January 6, 1992 agreement, but The Bar also states that this provision was not included in the final agreement(B-Ex 12) **because CNB would not agree to increasing the minimum square footage requirements**. For the Respondent to simply inquire about raising the minimum square footage requirements for homes that will be constructed in the same subdivision that his home is located, is not a violation of any rule.

As stated above, the inquires were always based on CNB's approval, which never occurred. Therefore, the issue is irrelevant to the Respondent's alleged misconduct.

The ironic part of this whole matter is, Citizens National Bank was paid, the Arbors Subdivision was saved, the Bergs and Dillards were released from liability and the Respondent is being punished. The Respondent believes the referee sums up the whole situation best. TR, III, P.577-580.

RESPONDENT'S CROSS-REPLY TO ARGUMENT

POINT II

THE REFEREE'S RECOMMENDED DISCIPLINE OF A NINETY DAY SUSPENSION WAS NOT ERRONEOUS AND UNJUSTIFIED GIVEN THE FACTS OF THE CASE AND THE RESPONDENT'S PRIOR DISCIPLINARY HISTORY.

The Bar's Reply Brief again relies heavily on the Respondent's prior disciplinary history and the aggravating factors outlined by the Bar in its Initial Brief. As stated in Respondent's Answer Brief, due weight was given to Respondent's prior disciplinary history by the Referee. The prior conduct was 14 years ago and totally unrelated to the current charges. There is no pattern of misconduct and a 90 day suspension as recommended by the Referee would provide proof of rehabilitation and protect the public. Again, the Respondent argues that this 90 day discipline would have a deterrent effect on others who may be inclined to engage in similar behavior.

CONCLUSION

WHEREFORE, The Respondent prays this Honorable Court will review the Referee's findings of fact, conclusions of law and recommendation of a 90 day suspension and impose no more than a 90 day suspension in this case for the reasons stated herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of The Respondent's Cross-Reply Brief have been sent by United Parcel Service to the Supreme Court of Florida, Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida 32399-1927; a copy of the foregoing has been furnished by regular U.S. Mail to Bar Counsel, James W. Keeter, Esquire, The Florida Bar, 880 North Orange Avenue, Suite 200, Orlando, Florida 32801-1085; and a copy of the foregoing has been furnished by regular U.S. Mail to John A. Boggs, Esquire, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, this 21st day of October, 1996.

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