

IN THE SUPREME COURT OF FLORIDA

**FILED**  
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CLERK SUPREME COURT  
TAMPA, FLORIDA

THE FLORIDA BAR,

Petitioner,

Case No. 86, 513

v.

FLORIDA FIRST FINANCIAL GROUP, INC.,  
AND REED LEINHART A/K/A ANTHONY  
ROSSI, A/K/A MIKE STEELE, AS  
PRINCIPAL AND DIRECTOR OF FLORIDA  
FIRST FINANCIAL GROUP, INC., AND  
INDIVIDUALLY, AND TERRY DON SMITH,  
A/K/A PETE WILSON, INDIVIDUALLY

Respondent

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ANSWER BRIEF

OF

THE FLORIDA BAR

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES .....	ii
SYMBOLS AND REFERENCES .....	iii
STATEMENT OF THE CASE AND OF THE FACTS ....	1
SUMMARY OF THE ARGUMENT .....	5
ARGUMENT .....	6
I. <u>THE REFEREE'S FINDINGS OF FACT AND CONCLUSIONS OF LAW ARE SUPPORTED BY CLEAR AND CONVINCING EVIDENCE IN THE RECORD AND SHOULD BE UPHELD.</u>	
A. <u>Respondents have failed to show that the Referee's findings are clearly erroneous or wholly without evidentiary support.</u>	
B. <u>The Referee's conclusions of law are correct and should be approved.</u>	
II. <u>THE REFEREE'S RECOMMENDATION FOR THE ENTRY OF AN INJUNCTION IS THE PROPER SANCTION AND SHOULD BE UPHELD.</u>	
III. <u>THE REFEREE'S RECOMMENDATION THAT THE COSTS OF THESE PROCEEDINGS BE TAXED AGAINST RESPONDENTS IS PROPER AND SHOULD BE UPHELD.</u>	
CONCLUSION .....	13
CERTIFICATE OF SERVICE .....	14

TABLE OF AUTHORITIES

<u>CASES</u>	<u>Pages</u>
<u>The Florida Bar v. Fuentes,</u> 190 So. 2d 748 (Fla. 1966).....	8, 9
<u>The Florida Bar v. Hirsch,</u> 359 So. 2d 856 (Fla. 1978).....	6, 7
<u>The Florida Bar v. Lipman,</u> 497 So. 2d 1165, 1168 (Fla. 1986).....	6
<u>The Florida Bar v. Neu,</u> 597 So. 2d 266 (Fla. 1992).....	6
<u>The Florida Bar v. Schramek,</u> 616 So. 2d 979, 983 (Fla. 1993).....	10, 11
<u>The Florida Bar v. Wagner,</u> 212 So. 2d 770, 772 (Fla. 1968).....	6
<u>The Florida Bar v. Warren,</u> 655 So. 2d 1131 (Fla. 1995).....	9

### SYMBOLS AND REFERENCES

In this Brief, The Florida Bar, Petitioner, will be referred to as "The Florida Bar," or "the Bar." Respondent Florida First Financial Group, Inc. will be referred to as "Respondent Corporation." Respondent Reed Leinhart a/k/a Anthony Rossi, a/k/a Mike Steele will be referred to as "Respondent Leinhart." Respondent Terry Don Smith a/k/a Pete Wilson will be referred to as "Respondent Smith."

"S" will refer to the joint stipulation dated August 23, 1996.

"T" will refer to the transcript of the trial before the Referee in the case styled The Florida Bar v. Florida First Financial Group, Inc., et al, Supreme Court Case No. 86,513 held on August 23, 1996.

"RR" will refer to the Report of Referee in Supreme Court Case No. 86,513 dated October 15, 1996.

STATEMENT OF THE CASE AND THE FACTS

Respondents Florida First Financial Group, Inc. and Reed Leinhart a/k/a Anthony Rossi, a/k/a Mike Steele, as Principal and Director of Florida First Financial Group, Inc., and Individually, and Terry Don Smith, a/k/a Pete Wilson, Individually have petitioned the Court to review the Referee's findings and recommendations. The Petitioner, The Florida Bar, herein answers Respondent's Initial Brief.

In Count One of The Florida Bar's Petition Against the Unlicensed Practice of Law, The Florida Bar alleged that Respondent Smith held himself out as an attorney to Mr. Dan Lukic and Mr. Troy Viney in an attempt to collect a debt owed to Cimarron Apartments. At trial, Mr. Lukic testified that Respondent Smith, using the name Pete Wilson, stated that he was representing Cimarron Apartments and that he wanted to serve Mr. Lukic with a summons for court (T, pp. 9-10). Mr. Lukic further testified that Respondent Smith informed him that if they went to court Mr. Lukic would pay Respondent Smith's legal fees and his wages would be garnished (T, p. 10). Additionally, Mr. Lukic testified that when he questioned Respondent Smith as to whether he was an attorney, Respondent Smith affirmatively answered that

he was an attorney. Id.

Mr. Troy Viney also testified that Respondent Smith definitely represented himself to be an attorney (T, p. 23). Mr. Viney explained that Respondent Smith, using the name Pete Wilson, stated that he was representing Cimarron Apartments and he was going to take Mr. Viney to court unless they worked out a settlement (T, pp. 22-23, 26-27). Mr. Viney further testified that he was under the impression that Respondent Smith was an attorney because he used words, phrases and threats that a lawyer would use (T, pp. 23, 27). The only reason that Mr. Viney entered into a payment plan with Respondent Corporation was to avoid being sued by Respondent Smith (T, pp. 25-26).

In order to avoid going to court, Mr. Viney and Mr. Lukic scheduled a meeting with Pete Wilson at the office of Respondent Corporation (T, pp. 11, 24). When they arrived for their meeting with Pete Wilson, Mr. Viney and Mr. Lukic testified that they were informed that Pete Wilson was not available because he was held up in court. Id. Respondent Smith testified that he did meet with Mr. Lukic and Mr. Viney in his office, however, he did not use the name Pete Wilson (T, pp. 80, 87). Respondent Smith stated that he introduced himself to Mr. Lukic and Mr. Viney as Lee Crawford. Id. At this meeting with Mr. Lukic and

Mr. Viney, Respondent Smith negotiated a settlement amount of \$650.00 and he authorized a monthly payment plan (T, pp. 11-12, 24, 80-81). Mr. Viney and Mr. Lukic signed promissory notes and paid \$70.00 to Respondent Corporation (T, pp. 24, 81).

In Count Two, The Florida Bar alleged that Respondent Leinhart held himself out as an attorney to Mr. William Bronco in an attempt to collect a debt owed to Sultenfuss Properties. At trial, Mr. Bronco testified that Respondent Leinhart, using the name Mike Steele, described himself as counsel on this legal matter and he threatened to take Mr. Bronco to court (T, pp. 31, 55). Mr. Bronco further testified that he received a second phone call from a person who identified himself as Bill Williams (T, p. 32). Bill Williams stated he was calling Mr. Bronco on behalf of Mike Steele who was prosecuting a case in federal court (T, pp. 32, 41-42). Bill Williams is an alias name used by Keith White, an employee of Respondent Corporation (T, pp. 112-121). Based on these conversations, Mr. Bronco testified that he believed Respondent Leinhart was an attorney who was coming after him for a debt on behalf of the property manager for Sultanfuss Properties (T, p. 33).

Respondent Leinhart testified that he did sign a cease and desist affidavit in March 1990 agreeing not to hold himself out

as an attorney or to engage in any conduct that constitutes the unlicensed practice of law (T, pp. 97-100). Respondent Leinhart further testified that he did leave a message for Mr. Bronco to call Mike Steele regarding a legal matter (T, p. 108).

Furthermore, Respondent Leinhart also testified that he did ask Keith White, another debt collector for Respondent corporation, to contact Mr. Bronco because he was going to be tied up in federal court (T, pp. 112, 122).

The Referee made the following recommendations to this Court:

A. That Respondents be found to have engaged in the unlicensed practice of law in the State of Florida.

B. That Respondents be restrained and enjoined from using the type of language and terms or the preparing of legal documents, i.e. promissory notes or settlement agreements, without making abundantly clear that they are not attorneys, and from otherwise engaging in the practice of law in this state.

C. That the costs of this proceeding be taxed against Respondents.

It is the position of The Florida Bar that the Referee's findings of fact, conclusions of law and recommendations are supported by clear and convincing evidence in the record and should be upheld.



### SUMMARY OF ARGUMENT

The Referee's findings of fact and conclusions of law are supported by clear and convincing evidence in the record and should be upheld. Any error regarding the alias names used by Respondents and the employees of Respondent Corporation is harmless and immaterial.

The Bar presented competent and substantial evidence that Respondents are engaged in the unlicensed practice of law by impliedly and expressly holding themselves out to the public as attorneys in order to collect debts. As the evidence supports the Referee's findings of fact and conclusions of law, these findings and conclusions are not clearly erroneous.

The Referee's recommendations that the Respondents be found to have engaged in the unlicensed practice of law, that the Respondents be restrained and enjoined from engaging in the practice of law and that the costs of these proceedings be taxed against Respondent are proper based on the evidence presented and should be upheld.

## ARGUMENT

I. THE REFEREE'S FINDINGS OF FACT AND CONCLUSIONS OF LAW ARE SUPPORTED BY CLEAR AND CONVINCING EVIDENCE IN THE RECORD AND SHOULD BE UPHELD.

A. Respondents have failed to show that the Referee's findings are clearly erroneous or wholly without evidentiary support.

Although the final judgment of this matter resides with this Court, the Referee is given the initial fact finding responsibility. The Florida Bar v. Wagner, 212 So. 2d 770, 772 (Fla. 1968). It is the duty of the referee to weigh the credibility of the witnesses that come before him and to resolve any conflicts in the evidence. The Florida Bar v. Lipman, 497 So. 2d 1165, 1168 (Fla. 1986). Therefore, the referee's findings will be accorded substantial weight and they will not be overturned unless clearly erroneous or lacking in evidentiary support. Wagner at 772.

As the party seeking to overturn the referee's findings and recommendation in this matter, the Respondents have the burden of showing the referee's report is clearly erroneous or lacking in evidentiary support. See, The Florida Bar v. Neu, 597 So. 2d 266 (Fla. 1992). Unless this burden is met, the referee's findings will be upheld on review. The Florida Bar v. Hirsch, 359 So. 2d 856 (Fla. 1978).

The Respondents only objection to the Referee's findings of fact, however, is that the Referee confused the fact that Respondent Leinhart used the alias name of Mike Steele and employee Keith White used the alias name of Bill Williams. This error is harmless and immaterial. Furthermore, any error by the referee regarding Respondents use of alias names illustrates the great lengths taken by the Respondents to confuse and deceive the public.

The evidence presented in the joint stipulation and in the record shows that Respondent Leinhart contacted William Bronco using the name Mike Steele (S, p. 3; T, pp. 31, 108, 117). Respondent Leinhart using the name Mike Steele identified himself as counsel concerning this legal matter and he threatened to take Mr. Bronco to court (T, pp. 31, 55). Mr. Bronco received a second telephone call from an individual who identified himself as Bill Williams (T, p. 32). Bill Williams stated that he was calling on behalf of Mike Steele who was prosecuting a case in federal court (T, pp. 32, 41-42). Based on these conversations, Mr. Bronco believed that Respondent Leinhart was an attorney (T, p. 33).

Additionally, Respondent Leinhart admitted that he left a message for Mr. Bronco to contact Mike Steele regarding a legal

matter (T, p. 108). Respondent Leinhart also asked Keith White to telephone Mr. Bronco because he was going to be involved in a trial in federal court (T, p. 112).

Thus, the record reflects that Respondent Leinhart held himself out as an attorney to Mr. Bronco, that Keith White using the name of Bill Williams did assist Respondent Leinhart in holding himself out as an attorney and Keith White is an employee of Respondent Corporation. Therefore, there is sufficient evidence in the record to support the Referee's recommendation that Respondent Leinhart be found to have engaged in the unlicensed practice of law. Respondent's challenge to the Referee's findings is immaterial and must fail as a matter of law.

B. The Referee's conclusions of law are correct and should be approved.

In the Referee's conclusions of law, the Referee determined that the methods used by the Respondents to collect debts were similar to the activities that this court enjoined in The Florida Bar v. Fuentes, 190 So. 2d 748 (Fla. 1966). In Fuentes, this court prohibited Respondent from using any terms or phrases such as "Notaria", "Notario Publico" and "Consultoria" that would lead the public to believe that Respondent is licensed to practice

law. Id at 752. In the case at issue, the referee found that Respondents were holding themselves out to the public as attorneys by using terms and phrases that are traditionally used by person who are licensed to practice law (RR, p.3). Therefore, the Referee was correct in relying on Fuentes.

Relying on The Florida Bar v. Warren, 655 So. 2d 1131 (Fla. 1995), the Referee found that Respondent Smith engaged in activities that constitute the unlicensed practice of law by negotiating a settlement of a debt on behalf of Cimarron Apartments and preparing a promissory note reflecting the settlement of the debt (RR, p. 3). In Warren, this court ruled that preparing pleadings and other legal documents for third parties and giving advice and making decisions on behalf of others that require legal skill and a knowledge of the law greater than that possessed by the average citizen constitutes the unlicensed practice of law.

Respondents object to the Referee's reliance of Warren as precedent in this matter. Respondents argue that Warren has no precedential value because this court entered a default judgment against Respondent.

This argument is without merit as Rule 10-7.1(b)(4) of the Rules Regulating The Florida Bar provides that

(i) f no response or defense is filed within the time permitted, the allegations of the petition shall be taken as true for the purposes of that action (and) (t) he court will then, upon its own motion or upon motion of any party, decide the case upon its merits, granting such relief and issuing such order as might be appropriate; or it may refer the petition for further proceedings according to Rule 10-7.1(b) (6) .

Therefore, although Respondent did not file a defense to The Florida Bar's Petition Against the Unlicensed Practice of Law, this court did determine the case on its merits and ruled that Respondent's activities constituted the unlicensed practice of law. Accordingly, the referee's reliance on Warren was proper and the referee's conclusions of law should be upheld.

II. THE REFEREE'S RECOMMENDATION FOR THE ENTRY OF AN INJUNCTION IS THE PROPER SANCTION AND SHOULD BE UPHELD.

The Supreme Court of Florida has the inherent power under the Florida Constitution to prevent the practice of law by those not admitted to practice law and it may enforce its authority through either injunction or contempt proceedings because the unlicensed practice of law constitutes a contempt of court. The Florida Bar v. Schramek, 616 So. 2d 979, 983 (Fla. 1993).

The Referee found that as a matter of law Respondent engaged in activities that constitute the unlicensed practice of law (RR, p.3). Specifically, the Referee ruled that the Respondents held

themselves out to the public as attorneys by using terms and phrases such as "represent", "counsel", "summons", "garnish wages" and "legal fees", that are traditionally used by persons who are licensed to practice law (RR, p. 3) The Referee also determined that negotiating the settlement of a debt on behalf of a client and the drafting of a promissory note constituted the practice of law. Because Respondents engaged in these unlicensed practice of law activities as part of the business of debt collection, the Referee recommended they be restrained and enjoined from 1) using language, and terms that lead the public to believe that they are licensed to practice law; 2) preparing legal documents such as promissory notes or settlement agreements and 3) otherwise engaging in the unlicensed practice of law in the State of Florida unless and until Respondents are duly licensed to so practice. (RR, p. 3) An injunction in this matter is the proper sanction for conduct that constitutes a contempt of this court.

Objecting to the Referee's recommendation, Respondents argue that Respondent Smith was not practicing law. This unsupported argument is solely based on Respondents' opinion and without merit as the Referee's recommendations are based on substantial, competent evidence in the record.

III. THE REFEREE'S RECOMMENDATION THAT THE COSTS OF THESE PROCEEDINGS BE TAXED AGAINST THE RESPONDENTS IS PROPER AND SHOULD BE UPHELD.

Respondents final objection related to the Referee's recommendation that the costs of this proceeding be taxed against the Respondents. Respondents argue that the depositions of Respondent Smith and Respondent Leinhart were not used by Petitioner in trial and therefore the costs of these depositions should not be taxed against Respondent.

This objection is also without merit as these depositions were utilized in trial. Petitioner cross examined Respondent Smith with his deposition testimony regarding the alias name that he used when meeting with Mr. Lukic and Mr. Viney. (T, pp. 86-88). Petitioner also questioned Respondent Leinhart concerning his deposition testimony wherein he stated that he will rotate a collector who is getting weak (T, p. 126). As the depositions of the Respondents were utilized by the Petitioner, the Referee's recommendation taxing the costs of these proceedings against the Respondents is proper and should be upheld.

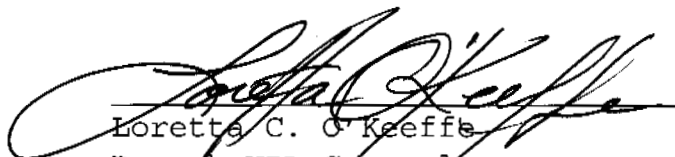


CONCLUSION

The referee's findings of fact are supported by clear and convincing evidence in the record. The referee's recommendations for disposition are proper based on the evidence that was presented at trial.

The Florida Bar respectfully requests that this Court uphold the referee's findings of fact, conclusions of law and recommendation and enjoin and restrain the Respondents from engaging in the unlicensed practice of law and that the Bar's costs in this unlicensed practice of law proceeding be taxed against the Respondents.

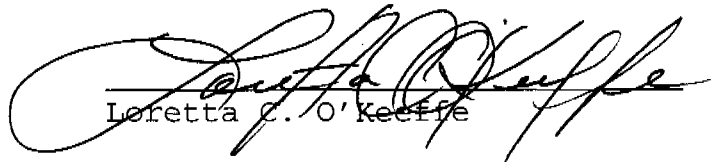
Respectfully Submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of The Florida Bar's Answer Brief has been furnished by overnight mail via Airborne Express to Sid J. White, Clerk, The Supreme Court of Florida, 500 S. Duval Street, Tallahassee, Florida, 32399-1927; and copies were furnished by regular U.S. Mail to Frederick Vollrath, Esq., Counsel for Respondents, Post Office Box 18942, Tampa, Florida, 33679, and Mary Ellen Bateman, UPL Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida, 32399 this 7<sup>th</sup> day of November, 1996.

  
Loretta C. O'Keefe