



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 .....	7
ARGUMENT .....	8
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>	8
II. <u>THE REFEREE'S RECOMMENDATIONS FOR FINAL DISPOSITION ARE PROPER BASED ON THE EVIDENCE PRESENTED AND SHOULD BE UPHELD.</u>	11
CONCLUSION .....	13
CERTIFICATE OF SERVICE .....	14

TABLE OF AUTHORITIES

<u>CASES</u>	<u>Pages</u>
<u>The Florida Bar v. Arango,</u> 461 So. 2d 932 (Fla. 1994).....	11
<u>The Florida Bar v. Lipman,</u> 497 So. 2d 1165, 1168 (Fla. 1986).....	8
<u>The Florida Bar v. Marable,</u> 645 So. 2d 438 (Fla. 1994).....	9
<u>The Florida Bar v. Neu,</u> 597 So. 2d 266 (Fla. 1992).....	9
<u>The Florida Bar v. Schramek,</u> 616 So. 2d 979, 983 (Fla. 1993).....	11, 12
<u>The Florida Bar v. Wagner,</u> 212 So. 2d 770, 772 (Fla. 1968).....	8

### SYMBOLS AND REFERENCES

In this Brief, The Florida Bar, Petitioner, will be referred to as "The Florida Bar," or "the Bar." Respondent, Robert E. Hughes, Sr., will be referred to as "Respondent."

"TR-1" will refer to the transcript of the trial before the Referee in the case styled The Florida Bar v. Robert E. Hughes, Sr., Supreme Court Case No. 86,571 held on June 7, 1996. "TR-2" will refer to the transcript of the closing arguments before the Referee in the same case held on July 19, 1996.

"RR" will refer to the Report of Referee in Supreme Court Case No. 86,571 dated September 6, 1996.

STATEMENT OF THE CASE AND THE FACTS

Respondent, Robert E. Hughes, Sr., has petitioned this 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 held himself out as capable of drafting legal documents and provided legal advice and services to Mr. Ebi Bonfietti that affected Mr. Bonfietti's important legal rights and the advice and services provided by Respondent required legal knowledge and skill greater than that possessed by the average citizen.

At trial, Mr. Bonfietti testified that he entered into an agreement with Mr. Ronald Hadley to purchase a house at 1359 Michigan Avenue, South, Clearwater, Florida. TR-1 at 25. Once Mr. Hadley accepted Mr. Bonfietti's offer, Mr. Bonfietti drafted an agreement that reflected the price, terms and conditions of the purchase of this property. TR-1 at 25-27. Based on Mr. Hadley's recommendation, Mr. Bonfietti brought the handwritten contract for sale to Respondent. TR-1 at 33. When Mr. Bonfietti

delivered the rough draft of the sales contract to Respondent, he explained to Respondent that he wanted Respondent to prepare a standard contract for sale and he also wanted the property deeded to his daughter in the event that anything ever happened to him. TR-1 at 35-36. Respondent explained to Mr. Bonfietti that he was very experienced in drafting real estate contracts as he had drafted dozens of them and he would be able to put it all together for him. TR-1 at 35-36. When Mr. Bonfietti questioned Respondent as to whether he needed to go to a title insurance company or an attorney for this matter, Respondent stated that he could handle the whole thing for him and lawyers only have a habit of fouling up things like this. TR-1 at 37. Respondent charged Mr. Bonfietti \$200.00 to prepare the document. TR-1 at 37.

Mr. Bonfietti never received the standard contract that he requested. TR-1 at 41. Respondent prepared a land trust agreement for Mr. Bonfietti. Respondent also appointed himself as beneficiary of this land trust agreement. Respondent explained to Mr. Bonfietti that Mr. Bonfietti wanted to make his daughter a beneficiary of the property and that was the reason that he chose the land trust. TR-1 at 53. Respondent also advised Mr. Bonfietti that at any time Mr. Bonfietti wanted he

could change any or all of the land trust. Id.

When Mr. Bonfietti had trouble refinancing his property, he brought the land trust agreement to Nancy Oset, Esq. for her review. TR-1 at 6, 56. Ms. Oset testified that Mr. Bonfietti thought he had been given title to the property in his own name and he did not understand why the property had been put into a land trust. Ms. Oset explained the meaning of the land trust to Mr. Bonfietti and at Mr. Bonfietti's request, Ms. Oset contacted Respondent in an effort to resolve the situation. In a telephone conversation, Respondent informed Ms. Oset that he had prepared the land trust, that he was extremely knowledgeable in the land trust area and that he had taught other attorneys how to prepare land trusts. TR-1 at 8. Respondent also stated that he was not willing to make a change in the title or Mr. Bonfietti's situation at that time. Id.

Based on a letter from the original seller of the property at 1359 Michigan Avenue South, Mr. Bonfietti found a bank that was willing to give him a mortgage on the property. However, at closing, Respondent demanded an additional payment of \$545.00 from Mr. Bonfietti to fight off all the legal problems that Mr. Bonfietti caused him, otherwise there would be no closing on the property. TR-1 at 60-61.

In Count Two of The Florida Bar's Petition Against the Unlicensed Practice of Law, The Florida Bar alleged that Respondent provided legal advice and drafted legal documents that affected persons' important legal rights and required legal knowledge and skill greater than that possessed by the average citizen.

At trial, Mr. Dennis Crine testified that Respondent prepared an articles of agreement for the purchase and sale of property 313 Plymouth Street, Safety Harbor, Florida. TR-1 at 133-138. Mr. Crine and his wife, Teresa Crine met with Respondent and the owner of the property, Mr. Mary Lou Becker about purchasing Ms. Becker's property. TR-1 at 135-136. Respondent explained the articles of agreement to Mr. & Mrs. Crine. TR-1 at 136. Based on Respondent's advice, Mr. and Mrs. Crine entered into an agreement to purchase Ms. Becker's property. Id. Respondent informed Mr. Crine that he was probably the most knowledgeable person in the state of Florida regarding land trusts and he had taught a course on land trusts. Id. Respondent assisted Mr. & Mrs. Crine by asking the Crines questions and then typing the pertinent information into the agreement that he had prepared. TR-1 at 137. Respondent also informed Mr. Crine that he had drafted the form for the articles



of agreement and it was his own form. TR-1 at 137-138.

Respondent testified that he considers himself to be an expert in land trusts and that he has prepared land trust forms. TR-1 at 163, 166. Respondent also testified that he prepared the assignment of beneficial interest for Mr. Hadley and Mr. Bonfietti, a note, a chattel mortgage, a UCC1, and the collateral assignment of beneficial interest. TR-1 at 179. Respondent further testified that he drafted the articles of agreement form that he used for Mary Lou Becker and Mr. and Mrs. Crine. TR-1 at 199-200.

The Referee made the following recommendations to this Court:

A. That Robert E. Hughes, Sr. be found to have engaged in the unlicensed practice of law in the State of Florida.

B. That Robert E. Hughes, Sr. be restrained and enjoined from counseling, advising and preparing documents for individuals in the creation and transfer of land trusts, and from otherwise engaging in the practice of law in the State of Florida, until such time as Robert E. Hughes, Sr. is duly licensed to practice in this state.

C. That the costs of this proceeding be taxed against Robert E. Hughes, Sr.

It is the position of The Florida Bar that the Referee's findings of fact and conclusions of law are supported by clear and convincing evidence in the record and should be upheld and that the Referee's recommendations are proper based on the evidence presented 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. The Referee based his findings of fact on testimony of several witnesses as well as numerous documentary exhibits presented by the Bar.

The Bar presented competent and substantial evidence that Respondent engaged in the unlicensed practice of law by (1) holding himself out as capable of preparing land trust agreements; (2) providing legal advice and services to Mr. Bonfietti; and (3) providing legal advice and services to Mr. Crine. As the evidence supports the Referee's findings of fact and conclusion of law, these findings and conclusions are not clearly erroneous.

The Referee's recommendations that Respondent be found to have engaged in the unlicensed practice of law, that Respondent 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.

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.

The referee herein listened to testimony and evidence presented by the parties, observed the demeanor of witnesses and found that Respondent gathered information, counseled persons and prepared documents for the transfer of interest in property through land trusts. RR at 4. The referee also determined that Respondent's actions affected important rights of persons under law and that the reasonable protection of rights and property of those advised required that a person giving such advice possess legal skill and knowledge of law greater than that possessed by

the average citizen. RR at 4.

As the party seeking to overturn the referee's findings and recommendations in this matter, Respondent has 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). In his petition for review, Respondent takes the position that the Bar has failed to prove its case as the timing of the acts alleged are difficult to ascertain based on the ability of the witnesses to accurately recall or relate the acts that occurred.

Although the referee stated in his report that the timing of the alleged acts in this case were difficult to ascertain, the referee did make detailed findings of fact from the evidence that was presented. The referee is in a better position to evaluate the demeanor and credibility of witnesses, therefore, the referee's findings of fact should be upheld so long as those findings are supported by substantial and competent evidence. The Florida Bar v. Marable, 645, So. 2d 438 (Fla. 1994).

Respondent also argues in its Petition for Review that the Bar failed to introduce into evidence any land trust document that was prepared for Mr. Ebi Bonfietti. This argument must fail as the referee stated that there was no doubt in the evidence

that a land trust agreement was prepared by Respondent for Mr. Bonfietti. RR at 3.

As to Count Two, Respondent alleges that the Report of Referee is incorrect in that the referee erroneously found that Mr. Crine testified that Respondent indicated that he would be representing Mr. Crine in the transaction. This argument must also fail as Mr. Crine testified that "Respondent represented both (the seller) Mary Lou (Becker) and myself in the agreement." TR-1 at 143. Mr. Crine also testified that Respondent prepared a lawsuit for Mr. & Mrs. Crine to sue the seller of their property and Respondent offered to represent Mr. & Mrs. Crine in this lawsuit. TR-1 at 139-140. This evidence sufficiently supports the referee's findings that Respondent indicated that he could represent Mr. Crine.

Respondent has presented no substantial evidence to support his position that the referee's report is clearly erroneous or lacking in evidentiary support. Thus, Respondent has failed to meet his burden of production, and his burden of persuasion, as they pertain to any challenge of the referee's findings.

The referee's findings of fact and conclusions of law are supported by clear and convincing evidence in the record and should be upheld.

II. THE REFEREE'S RECOMMENDATIONS FOR FINAL DISPOSITION ARE PROPER BASED ON THE EVIDENCE PRESENTED AND SHOULD BE UPHELD.

The referee recommended that Respondent be found to have engaged in the unlicensed practice of law. Respondent argues that he has not engaged in the unlicensed practice of law as he did nothing more than what a realtor would have done in the same situation. However, in The Florida Bar v. Arango, 461 So. 2d 932, 934 (Fla. 1994), this Court stated that a person licensed in the sale and brokerage of real estate may prepare sales purchase agreements, but where Respondent is neither a real estate broker or salesperson nor attorney at law, he could not lawfully engage in such activity. Furthermore, this Court determined that it constitutes the unlicensed practice of law for a nonlawyer to provide legal advice on the transfer of real property. The Florida Bar v. Schramek, 616 So. 2d 979, 984 (Fla. 1993).

Therefore, by engaging in activities that are nothing more than what a realtor would have done, Respondent has engaged in the unlicensed practice of law as he is neither a real estate broker or salesperson nor attorney at law.

The referee also recommended that Respondent be restrained and enjoined from counseling, advising and preparing documents

for others involving the creation and transfer of land trusts, and from otherwise engaging in the practice of law and the costs of these proceedings be taxed against Respondent. The Court has the inherent power under the Florida Constitution to prevent the practice of law by those not admitted to practice law and this Court may enforce its authority through either injunction or contempt proceeding because the unlicensed practice of law constitutes a contempt of Court. Schramek at 983.

The referee's recommendation for an injunction against Respondent is the proper sanction for conduct that constitutes a contempt of this Court and enjoining Respondent from counseling, advising and preparing documents for others in the creation and transfer of land trusts. is appropriate because the evidence demonstrates that Respondent holds himself out to the public as capable of preparing land trust agreements.

The referee's recommendations for disposition of this case are proper based on the evidence presented 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 recommendations and enjoin and restrain Respondent from engaging in the unlicensed practice of law and that the Bar's costs in this unlicensed practice of law proceeding be taxed against Respondent.

Respectfully Submitted,

---

Loretta C. O'Keeffe  
Branch UPL Counsel  
The Florida Bar  
Suite C-49  
Tampa Airport Marriott Hotel  
Tampa, Florida 33607  
(813) 875-9821  
Florida Bar No. 901539

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 Bruce M. Harlan, Esq., Counsel for Respondent, 326 Belcher Road North, Clearwater, Florida, 34625 and to Mary Ellen Bateman, UPL Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida, 32399 this 16<sup>th</sup> day of October, 1996.

  
Loretta C. O'Keefe