

**FILED**

SID J. WHITE

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IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT  
By \_\_\_\_\_  
Chief Deputy Clerk

Supreme Court Case  
No. 90,022

IN RE: PETITION FOR REINSTATEMENT  
OF GAIL ANNE ROBERTS

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The Florida Bar File  
No. 97-71,317 (MRE-16B)

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The Florida Bar's Reply Brief

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CYNTHIA ANN LINDBLOOM  
Bar Counsel  
TFB# 0016421  
The Florida Bar  
444 Brickell Avenue  
Suite M-100  
Miami, Florida 33131  
(305) 377-4445

JOHN ANTHONY BOGGS  
Staff Counsel  
TFB# 0253847  
The Florida Bar  
650 Apalachee Parkway  
Tallahassee, Florida 32399-2300  
(904) 222-5286

JOHN F. HARKNESS, JR.  
Executive Director  
TFB# 123390  
The Florida Bar  
650 Apalachee Parkway  
Tallahassee, Florida 32399-2300  
(904) 222-5286

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**STATEMENT OF THE CASE AND FACTS**

Both the Bar and the Petitioner have set forth a statement of the case and facts. The areas of disagreement pertinent to this appeal are set forth in the argument portion of this brief.

**ARGUMENT**

THE REFEREE ERRED AS A MATTER OF LAW  
BY RECOMMENDING REINSTATEMENT

In the Initial Brief the Bar has pointed out that the burden is upon the petitioner to demonstrate that reinstatement is justified. The Florida Bar v. Dawson, 131 So.2d 471 (Fla. 1961). Furthermore, Dawson calls for more than mere factual assertions; it also requires corroborating evidence.

The petitioner has presented some factual distinctions and legal arguments. Neither the factual contentions nor the legal arguments affect the Bar's conclusion that the petitioner has failed to meet her burden.

Petitioner claims that the number of worthless checks identified by the Bar was incorrect. That was not quite the petitioner's position as the trial. Counsel for the petitioner stated on the record that there was no large disagreement with the number of checks. (T. 141-2).

The petitioner's expert claimed that there were not 192, but 188 different checks and that the total number of checks was 19 lower because some checks were presented twice. (T. 54-5). That some checks were presented twice was the same conclusion set forth by the Bar auditor, Carlos Ruga. (T. 142-46). By any count,

there was a substantial number of worthless checks issued, some of which were presented twice, and the petitioner certainly did not establish that the number was minimal or insignificant.

Petitioner asserts that there is evidence of restitution, namely her own testimony. However, restitution is not a defense. The Florida Bar v. Lopez, 545 So.2d 835 (Fla. 1989). Even if it could constitute a defense, petitioner's claim of total restitution is uncorroborated and corroboration is required. Dawson, supra. Petitioner's expert, Randy Moore, did not attempt to determine if all check recipients were reimbursed. (T. 59).

In regard to another factual matter, petitioner misunderstands the nature of the Bar's position regarding petitioner's income. The Bar is not arguing that the pertinent records of deposits prove failure to pay income tax. Rather, the documentary evidence establishes that the petitioner did not have a dramatic decline in income. Furthermore, that would not constitute a legal defense for the issuance of worthless checks.

Petitioner also argues that her conviction for buying cocaine involved certain elements of entrapment. She claims that she would have pursued that defense if she could have afforded to do so. One would assume that petitioner could have raised the matter herself, if it was viable, since she was a law school graduate. Further, if

she was insolvent, she could have obtained counsel to assist her. Her actual plea, was nolo contendere.

In regard to the cases cited by the Bar, petitioner alludes to some factual distinctions. Those distinctions are also irrelevant. This Court will note that the cases appearing in the Bar's brief are authority for legal principles which are unrefuted.

For example, this Court's discussion of the need to give substantial weight to the issuance of worthless checks is set forth in The Florida Bar v. Lopez, supra. The question of whether Lopez' conduct was on an overall basis, worse than that of petitioner, is of little consequence. The passage quoted from Lopez in our Initial Brief clearly indicates that petitioner's conduct is a basis for denying reinstatement.

The Petition of Wolfe, 257 So.2d 547 (Fla. 1972) places a heavy burden on the petitioner who seeks reinstatement. The Florida Bar v. Grusmark, 662 So.2d 1235 (Fla. 1995) required proof of personal integrity and general fitness for a position of trust and confidence. The Florida Bar, In Re Hill, 298 So.2d 161 (Fla. 1974) and The Florida Bar v. Parsons, 238 So.2d 644 (Fla. 1970) are cases which involve defenses more significant than this petitioner's, but which were rejected.

Petitioner cites no case which holds that in view of the

undisputed facts in this case, it can nevertheless be said that her burden has been met. Further, petitioner cites no case which holds that her defense of diminished income can legally justify the issuance of large numbers of worthless checks.

Petitioner is unable to dispute that The Florida Bar v. Janssen, 643 So.2d 1065 (Fla. 1994) requires proof of "strict compliance" with the prior disciplinary order. No such proof was offered.

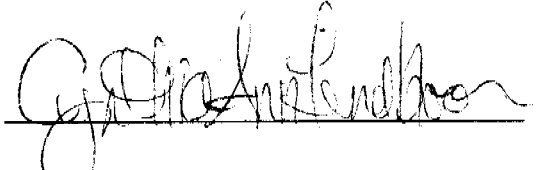
The only case which the petitioner has submitted as a basis for reinstatement is The Florida Bar v. Hernandez Yanks, 690 So.2d 1270 (Fla. 1997). The Yanks case included evidence of the issuance of five worthless checks on a joint checking account. Nearly all of the checks in the account were written by her husband. One of the worthless checks written by the petitioner was for her own health insurance at her place of employment. The Referee reasonably concluded that the petitioner did not know how much was in the joint account, as she had claimed.

In other words, there was a finding of a lack of culpability on the petitioner's part in Yanks. No similar lack of culpability was found by the Referee in this case.



CONCLUSION

Based upon the foregoing, the Petition for Reinstatement should have been denied. This Court should disapprove the Referee's findings and enter an order denying reinstatement.




CYNTHIA ANN LINDBLOOM  
Bar Counsel  
TFB No. 0016421  
The Florida Bar  
444 Brickell Avenue,  
Suite M-100  
Miami, Florida 33131  
Tel: (305) 377-4445

JOHN F. HARKNESS, JR.  
Executive Director  
TFB No. 123390  
The Florida Bar  
650 Apalachee Parkway  
Tallahassee, Florida 32399-2300  
Tel: (850) 561-5600

JOHN ANTHONY BOGGS  
Staff Counsel  
TFB No.  
The Florida Bar  
650 Apalachee Parkway  
Tallahassee, Florida 32399-2300  
Tel: (850) 561-5600

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of this The Florida Bar's Initial Brief was forwarded Via Airborne Express to **Sid J. White**, Clerk, Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32399-1927 and that a true and correct copy was mailed to **Michael R. Barnes**, attorney for petitioner, at 801 Whitehead Street, Key West, Florida 33040, and a copy was mailed to **John Anthony Boggs**, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300 on this 30<sup>th</sup> day of July, 1998.

  
\_\_\_\_\_  
CYNTHIA ANN LINDBLOOM  
Bar Counsel