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SID J. WHITE
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CLERK, SUPREME COURT
By _____
Chief Deputy Clerk
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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Supreme Court Case
No. 90,604

Complainant,

v.

ALBERT LOUIS CARRICARTE,

Respondent.

Answer Brief of The Florida Bar

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STATEMENT OF THE CASE AND OF THE FACTS

The Bar categorically rejects the Respondent's Statement of the Case and Facts which is nothing more than an argument. The Bar will attempt to set forth the basics of the case and facts.

Respondent's conduct was the subject of a disciplinary hearing. The Referee found that Respondent had obtained \$25,000.00 from his brother, Michael Carricarte, Sr., by threatening him. She recommended a suspension of 90 days and probation, a condition of which was periodic mental examination. The Referee also found that in litigation between Respondent and his brother Michael (among other parties), Respondent had disclosed information beyond that which was necessary to defend the pending litigation.

Three witnesses testified that Respondent, who was terminated as counsel to his brother's companies, had extorted \$25,000.00 from his brother. (T. 17, 69, 172). The \$25,000.00 was a portion of \$110,000.00 held by Respondent in his trust account for a real estate purchase by his former client. (T. 17, 69).

Respondent sent many threatening and bizarre communications to Michael. Some of those communications are set forth verbatim in the argument portion of this Brief. He also flaunted a gun and used it to intimidate Michael at a luncheon meeting. (T. 143).

In a civil suit initiated by Michael Carricarte and his companies, the Respondent filed detailed accusations of criminal conduct which contained no reference to a related defense. (T. 92, 93, 95). Those communications are set forth in the Argument portion of this Brief.

Arnold Segredo testified on behalf of Respondent. With regard to alleged theft of computer secrets, Segredo stated that Respondent was computer illiterate. (T. 242). Segredo was negative regarding Michael's capacity for truth. (T. 245).

Segredo was being sued by Michael and Respondent was a co-defendant (T. 254). Cross examination revealed that commercial literature advertising Segredo's services frequently represented that Segredo was an M.D. or Ph.D. or CEO (T. 261, 263, 265). Segredo denied responsibility (T. 259).

Respondent denied the threats (T. 288). He said that he asked for \$25,000.00 severance pay, but didn't threaten (T. 289). He also claimed computer illiteracy (T. 289) and challenged Michael's credibility and allegation of a million dollar theft by Respondent.

SUMMARY OF ARGUMENT

Respondent initially contends that there is insufficient evidence to prove that he extorted \$25,000.00 from his brother and/or his brother's company. He has failed to overcome the presumption of correctness of the Referee's findings. Three witnesses testified as to Respondent's threats and his demand of \$25,000.00 as severance pay. One of the three witnesses, who was not related to Respondent, made a written record of Respondent's call in affidavit form. He testified that Respondent "screamed" that Michael would pay.

Second, the Respondent fails to address the appropriate authority in his challenge to the imposition of probation and mental examinations. Standard 2.7 of the Florida Standards for Imposing Lawyer Sanctions provides that probation can be imposed in addition to other sanctions. Rule 3-5.1 of the Rules of Professional Conduct provides that probation may include conditions. The condition of required mental examination is fully justified by Respondent's conduct.

Respondent indulged in a wide variety of threats. He threatened his brother and his immediate family. There were many accusations forwarded to various agencies. He displayed a gun and used it to intimidate. There was a clear relationship between the condition of probation and Respondent's conduct.

Finally, Respondent contends that his revelation of confidential information,

acquired as counsel to Michael and his companies, was part of a vigorous defense in a civil suit. The evidence, however, demonstrates that Respondent filed allegations of criminal acts in a civil suit wherein Michael and his companies were the plaintiffs. The filings did not even attempt to relate the accusations of criminal conduct to any potential defense of the civil suit.

ISSUES ON APPEAL

I

WHETHER RESPONDENT HAS FAILED TO MEET HIS BURDEN OF PROVING INSUFFICIENT EVIDENCE OF EXTORTING A \$25,000.00 SEVERANCE PAYMENT (RESTATED)

II

WHETHER THE RESPONDENT HAS DEMONSTRATED NO ERROR REGARDING THE DISCIPLINARY REQUIREMENT OF MENTAL EXAMINATION (RESTATED)

III

WHETHER RESPONDENT HAS FAILED TO ESTABLISH THAT THERE WAS INSUFFICIENT EVIDENCE OF EXCESSIVE DISCLOSURE OF CONFIDENTIAL INFORMATION (RESTATED)

I

THE RESPONDENT HAS FAILED TO MEET HIS BURDEN OF PROVING INSUFFICIENT EVIDENCE OF EXTORTING A \$25,000.00 SEVERANCE PAYMENT (RESTATED)

Respondent's argument does not deal directly with the specific findings of fact of the Referee which he challenges. The findings of the Referee were, as Respondent points out, contained in paragraphs 24 through 27.

Those paragraphs follow:

24. Respondent, in connection with his representation of AMEDEX, handled a real estate closing for AMEDEX for the purchase of an office building. Respondent was given and was to hold approximately \$110,000.00 in trust for AMEDEX. The real estate funds were entrusted to Respondent for the specific purpose of the real estate closing.
25. At the time of respondent's termination as in-house counsel for AMEDEX, Respondent demanded that \$25,000.00 be conveyed to him before he would release the aforementioned funds. Respondent stated that he needed the funds to start a private practice.
26. Respondent threatened to sell and/or reveal AMEDEX's database to its competitors unless AMEDEX released \$25,000.00 to Respondent.
27. Under duress, AMEDEX released TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) to Respondent so that respondent would not reveal AMEDEX's confidential trade secrets. This became respondent's "severance agreement" and "severance pay".

Respondent's burden in regard to those findings has been set forth by this Court on many occasions. The burden of proof before this Court is upon the

Respondent who has petitioned for review of the Referee's Report. The Florida Bar v. McLure, 575 So.2d 176 (Fla. 1991). The Report is, of course, presumed to be correct and will be upheld unless clearly erroneous or lacking competent substantial evidence. The Florida Bar v. Winderman, 614 So.2d 484 (Fla. 1993); The Florida Bar v. Smiley, 622 So.2d 465 (Fla. 1993). Furthermore, the Referee is in the best position to evaluate the credibility of witnesses. The Florida Bar v. Marabel, 645 So.2d 438 (Fla. 1994).

Michael Carricarte, Jr. was one of three witnesses who testified to the fact that the settlement agreement was extorted. Upon being terminated, Respondent had stated that \$110,000.00 in his trust account would not be returned unless a severance agreement was worked out. (T. 17). As a result, Respondent received \$25,000.00 of funds held in his trust account for severance. (T. 16, 18, 20, Exh. 1).

Michael Anthony Carricarte, Sr. also testified that the \$25,000.00 was transferred to the Respondent from the trust account. (T. 68). The transfer resulted from Respondent's threat to keep the entire \$110,000.00 which was in his trust account. (T. 69). Michael Sr. decided to give the \$25,000.00 to "buy peace" (T. 69), but did so under duress.

Faxes from Respondent included threats to reveal confidential information (T. 73) of Michael Sr.'s company Amadex. Respondent claimed in fax transmissions to

his brother Michael to have the data base (T. 74) to which he had access and further, that "war was going on." (T. 74).

Byron Williams, a former vice president of operations, corroborated the testimony of both Michael Carricarte, Jr. and Sr. Williams had prepared an affidavit of a conversation with the Respondent. (T. 168). Williams read from the affidavit. (T. 172). Respondent indicated that he was infuriated over his dismissal as the company's attorney. (T. 172). Respondent said that Michael Sr. would not get the \$110,000.00 in trust funds back without taking care of Respondent. (T. 172). Respondent "screamed" that Williams should tell Michael that "he was going to pay." (T. 173). Michael told Williams a few days later that Respondent had demanded the \$25,000.00.

In sum, Respondent has not met his burden of proving an insufficiency of evidence regarding the threats.

II

RESPONDENT HAS DEMONSTRATED NO ERROR REGARDING THE DISCIPLINARY REQUIREMENT OF MENTAL EXAMINATION (RESTATED)

Respondent presents the argument that he has been denied due process. His position lacks merit. Respondent does not claim a lack of notice of the final hearing in which he participated fully. A determination of appropriate discipline is designated as part of the hearing by the appropriate rule and was made accordingly. Rule 3-7.6(k)(1)(c) of the Rules Regulating The Florida Bar.

Respondent is charged with knowledge of the standards of ethical and professional conduct. Rule 3-4.1 of the Rules Regulating The Florida Bar. Standard 2.7 of the Florida Standards for Imposing Lawyer Sanctions provides that probation can be imposed in conjunction with other sanctions. Rule 3-5.1(c) provides that probation as a sanction may include conditions.

The evidence supporting mental examination as a condition for probation is abundant. Respondent sent a wide variety of messages including numerous faxes of a strange and/or threatening nature.

The messages included one in which Respondent claimed to be standing at the grave of a deceased brother and that he was ready to end it all. (T. 74). Additional

faxes encompassed a variety of threats and charges including:

- a. Respondent was notifying 16 agencies of legal violations by Amedex (T. 75).
- b. Respondent knew of Carricarte Sr.'s travel schedule, that he would be waiting for him in Venezuela, and threatened Michael Sr.'s family members who were traveling with him (T. 75).
- c. Respondent's fax referred to "Mike Carricarte's illegal general agents in Mexico." (T. 78).
- d. Respondent sent a confidential list of agents to a company represented by Amedex and in another fax stated "P.S. Keep making threats and I'll fax the rest of the list." (T. 75, 80).
- e. Respondent accused Michael Sr. of committing a number of crimes (T. 84).

Respondent also sent the following fax:

- A. "I have been informed by the attorney representing the S.B.A., the Software Publishers Association, they want to interview me regarding the multiple violations of the software copyright laws committed by your companies over the past several years and to what extent you have purchased single copies of computer programs and installed and used them in your many computers.

"The very substantial money damages that you will have to pay combined with your losses in Mexico may just put you out of business.

"Because you terminated all attorney-client relationship between me and all of your companies when

you fired me so heroically last Christmas, I have no alternative but to disclose any and all information within my knowledge to the S.B.A. and any Federal authorities that they may work with.

“I shall also give the names and addresses of other former employees such as Tom Rolla obtained from one of my computer programs who can assist in their investigation.” (T. 81, 82).

Respondent also made threats by telephone and in person. In a 2:30 a.m. telephone call, he threatened to kill Michael Sr.’s children. (T. 140). At a luncheon meeting, Respondent, as Michael testified, put his hand on a zippered gun case and told Michael that it was a cocked, loaded 45. (T. 143). Respondent’s response to that testimony was: “It was actually a glock.” (T. 143). Respondent also flaunted the gun frequently at the work place. (T. 174).

Respondent threatened his own relatives. In addition to the messages previously identified, Respondent also accused his brother of crimes in another fax which stated:

“When you go to the State Attorney’s Office to make a full confession of your criminal acts, first insist that you be advised of your Constitutional rights against self-incrimination so that everything you say can be used against you in a Court of law.

“Apparently, you’re planning to confess to these felonies: Conspiracy to commit grand larceny. Michael A. Carricarte and others in your office conspired in 1995 to

commit grand larceny for over \$200,000 from Alberto Motta; "Grand larceny. Michael A. Carricarte and others in your office committed grand larceny in 1995 of over \$200,000."

It just says, "From Alberto," and he repeats it again in paragraph three.

"You have also violated Florida insurance law regulations far too numerous to enumerate here, but so serious that you will never have an insurance license in Florida.

"If you really want to clear your conscience, also make an appointment with the United States Attorney's Office, the F.B.I., the Internal Revenue Services, so you can confess to the following additional major crimes:

"Computer software piracy by purchasing one copy of numerous copyrighted software, installing them in over 100 computers in your company over a period of six years; money laundering and income tax evasion by conspiring with foreign insurance companies to receive large sums of money into off-shore bank accounts in order to avoid payments of substantial income tax to the United States.

"The case also appears to involve numerous Federal wire fraud and mail fraud felony violations by you and others in your office that the F.B.I. will find simply fascinating.

"Yesterday, I played at Louie's grave. This morning, in the dark on my knees, I recited the prayers for the dead, made peace with God, and prepared for Armageddon." (T. 84, 85).

Respondent's conduct clearly established a basis for probation and mental

examination as a condition thereof.

III

RESPONDENT HAS FAILED TO ESTABLISH THAT THERE WAS INSUFFICIENT EVIDENCE OF EXCESSIVE DISCLOSURE OF CONFIDENTIAL INFORMATION

The Referee found that Respondent had disclosed confidential information regarding his former client which went beyond the extent required for his own defense. Respondent challenges that finding, but has failed to demonstrate insufficiency of the evidence.

Michael, Sr. and Amedex have filed a civil suit against Respondent and Arnold Segredo. One document filed in that case by Respondent, who acted as counsel, was discussed and read aloud by Michael Carricarte:

A. The heading on it is, "Michael Carricarte's list of illegal agents of Amedex Worldwide Cincinnati selling illegal gray market policies in Mexico.

"See attached minutes of meeting in Mexico about incarcerating all of Amedex policy holders, illegal agents, and Michael Carricarte himself for buying and selling illegal non-admitted insurance policies in Mexico.

"Amedex is in violation of medical Federal laws because they have no insurance license to market or sell any type of insurance in Mexico."

What is has here is the names of your agents who operate in Mexico and Texas, California, Florida. It's a list that has their names. It has their numbers, their telephone

number, and there's about 24 pages of them. (T. 92-93).

Another document which was filed in the same case was also discussed:

A. This is a list of Amedex International policy holders and the top thing says, "Abused Winterthur Amedex International Policy holders - -" that's a Swiss insurance company that we represent "- - mistreated by Michael Carricarte and Winterthur.

"Amedex International U.S.A. Medical denied these claims without any valid reasons just so they don't have to pay," and it's got God knows how many pages here. It goes on and on. There must be close to, I would say, a hundred to 150 pages. (T. 95).

Michael Sr. also testified the foregoing information was confidential insofar as information regarding patient-client relationships was contained therein. Respondent offered no basis within the notices of filing either document in the pending civil litigation as to the reason or necessity for filing either.

CONCLUSION

Based upon the foregoing reasons and citations of authority, The Florida Bar respectfully submits that the Referee's Report is correct and should be approved by this Court.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of The Florida Bar's Answer Brief was forwarded Via Airborne Express to Sid J. White, Clerk, Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32399-1927, and a true and correct copy was mailed to Albert Luis Carricarte, Respondent, at his record Bar address of 8851 S.W. 62nd Terrace, Miami, Florida 33173-1615, on this 3RD day of December, 1998. I further certify that the size and style of type used in The Florida Bar's Answer Brief is 14 point ~~Times~~ New Roman.


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