047

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

FILED
SID J. WHITE
OCT 7 1998
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

10/30

THE FLORIDA BAR,

Complainant,

vs.

ALBERT LOUIS CARRICARTE,

Respondent.
_____/

Supreme Court Case
No. 90,604

The Florida Bar File
No. 96-71,079 (11H)

RESPONDENT'S BRIEF IN SUPPORT OF THE PETITION FOR REVIEW OF PORTIONS OF THE REPORT OF REFEREE DATED THE 16TH DAY OF JULY, 1998 THAT WAS MAILED TO THE RESPONDENT ON AUGUST 10, 1998.

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INTRODUCTION

The Respondent, Albert Louis Carricarte, is the subject of disciplinary proceedings filed by the Complainant, The Florida Bar, arising from a Florida Bar Complaint filed in Miami by the Respondent's brother, Michael A. Carricarte, on February 5, 1996. The parties will be referred to as they stood before the Referee. The record on appeal will be referred to by the letter "R" and the appropriate page number. The supplement to the Record will be referred to by the letters "SR." All emphasis is added unless otherwise indicated.

STATEMENT OF THE CASE

The instant case began when my complainant/brother, Michael A. Carricarte, filed a Bar Complaint against me on February 5, 1996. The complaint did not contain any allegations whatsoever that in the last week of December, 1994 or at any other time this Respondent threatened to sell and/or reveal Amedex's database to its competitors unless Amedex released $25,000.00 to the Respondent from the money that Respondent was holding in his trust account. Those accusations were made by the Complainant for the very first time ever in his Affidavit to the Florida Bar of October 31, 1996, or more than one (1) year and ten (10) months after the alleged "multi-million dollar theft." Today, more than three (3) years and nine (9) months after this "theft," it has still not been reported to any police agency anywhere and neither my brother nor any of his lawyers has ever requested that I return any of this "stolen" material.

From the beginning of these proceedings in February, 1996 through and including this date, The Florida Bar has never made a single allegation or complaint and/or presented any testimony, witness or evidence whatsoever that this Respondent was or is suffering from any mental and/or psychological problems that would require an evaluation by Florida Lawyer's Assistance, Inc. (FLA, Inc.). Such an unfounded request by the Bar is, in fact, a response to the totally irrational belief of my brother that anyone who opposes him in any way must have mental or psychological problems. His attitude is exactly the same as that which existed in the old Soviet Union

where some opponents of the Communist regime were considered to be mentally ill and in need of psychiatric treatment because no sane person would be an anti-communist.

During the three (3) lawsuits filed against me by my brother, at least five (5) Dade County Circuit Court judges and three (3) Third District Court of Appeals judges ruled on many matters in that litigation, and none found any wrongdoing or any other conduct on my part that should be referred to the Florida Bar for disciplinary action.

The final hearing of this matter was held on June 4, 1998 before Referee Lauren Levy Miller and testimony was taken. On July 16, 1998 the Referee signed the Report which was mailed to the Respondent on August 10, 1998.

On September 7, 1998 the Respondent filed his Petition For Review Of Portions Of The Report Of Referee. This appeal follows.

STATEMENT OF THE FACTS

1. December 25, 1994, Christmas Day: Respondent had been employed for over four (4) years as house counsel for two companies owned by his complainant/brother, Michael A. Carricarte, and there was absolutely no prior warning or indication that he was considering firing me.

2. December 26, 1994: After a slight disagreement over the phone because I had hired a security guard to watch his new office building which was without any alarm system or proper locks on Christmas day, Mike left me a message on my answering machine that I was fired and that he was going to ruin me and leave me out on the street. At no time thereafter did I ever return to Mike's new building.

3. Last week of December, 1994: At no time did Mike Carricarte and/or anyone acting on his behalf notify any law enforcement agency anywhere on this planet that I "had threatened to sell and/or reveal AMEDEX'S database to its competitors unless AMEDEX released $25,000.00" to me. No one in Mike's army of lawyers made any demand or request that I return such a database.

4. January 6, 1995: Mike and I sign an agreement for severance pay authorizing me to retain $25,000.00 from my trust account, which I sign at my home and he signs at his office without my being present, and Mike adds in his own hand: "We all wish you the very best and we have intentions of only helping you." He makes absolutely no mention of any theft or extortion

regarding any database that is "worth millions" and does not request or demand that I return his database. (R.18)

5. January 7 to November 21, 1995: Neither Mike Carricarte nor his army of lawyers file a single police report with any law enforcement agency on this planet complaining of the theft of his multi-million dollar database or make even a single demand that I return said database.

6. November 22, 1995: Two of Mike's companies file suit against me and Arnold Segredo in Dade County Circuit Court Case Number 95-22838 CA (02) without any allegation in the lawsuit of any theft or extortion of Mike's database that is "worth millions" or that I used that information to "extort" the $25,000.00 in severance pay pursuant to our signed agreement in which he wished me the "very best." (R. 18)

7. November 23, 1995 to February 4, 1996: Neither Mike nor his army of lawyers file a complaint with any police agency in this world about the "theft" of his database that is "worth millions," or make even one written or oral demand that I return such a multi-million dollar property that has the potential of destroying his business.

8. February 5, 1996: Mike files a Complaint against this Respondent with the Miami office of the Florida Bar which makes absolutely no mention whatsoever of the theft or extortion of anything, much less of a database that is "worth millions."

9. February 19, 1996: Bar Counsel Rhonda Lapin writes a letter to me that she has decided to close the file on this case because the matters are being considered by a court. (SR. 1)

10. February 27, 1996: After being pressured by my brother and his attorney who actually wrote a letter asking to discuss the matter with Ms. Lapin's bosses in Tallahassee if she did not reopen my file (SR. 2), Ms. Lapin reopens the file that she has just closed and begins to act in a totally arbitrary manner against this Respondent.

11. May 7, 1996: Norman Segall, one of Mike's lawyers, writes to my brother, Charlie, "...that the Bar has made the determination to refer the matter to Grievance Committee." (SR. 3) Thus, my brother and his lawyer know about Ms. Lapin's referral of Mike's complaint to the grievance committee weeks before she notified me.

12. June 4, 1996: The Grievance Committee assigns an investigating member, J. Thompson Thornton, that I am supposed to contact within the next ten (10) days but I was not notified of this assignment until November 16, 1996, or five (5) months later, so that my complainant/brother was able to contact and work with this investigating member for that time while I was totally unaware of his existence.

13. September 18, 1996: A letter is allegedly sent by Mike to Grievance Committee Investigating Member, Tom Thornton, charging for the very first time ever that my severance agreement with Mike of 1-6-95 was a "duress settlement." Suspiciously, this letter which Mike subsequently

boasted to me was backdated and not even signed by him, did not "materialize" until October 28, 1996, almost six (6) weeks later, when "Tom" Thornton faxed it to Ms. Lapin because she had already referred this new and perjured trust account "violation" to the grievance committee before she even informed me of it and asked me to respond.

14. October 31, 1996: My brother, Mike Carricarte, who wished me the "very best" and wanted to only to help me after I had just allegedly stolen his database that is "worth millions," and is a great believer in the proposition that when little lies work, then a really monumental and utterly unbelievable whopper was just what the Bar needed to really obliterate me, files his Affidavit at the very last minute of the Bar investigation, which for the very first time ever, accuses me of having stolen his database that is "worth millions" in the last week of December, 1994. (R. 121-124) Mike also clearly swears in this Affidavit that I threatened to "financially negotiate" his company database with his competitors and that is the reason that I "kept" the $25,000 (severance pay). Therefore, by Mike's own sworn statements, I had to have his database that is "worth millions" before he paid me my severance pay on January 6, 1995. This accusation is made by Mike for the first time more than ONE (1) YEAR AND TEN (10) MONTHS after my totally unexpected firing on December 26, 1994, and would have required that I, who was computer illiterate at the time, in some invisible mode sneak into his new building where all of the computer hardware and software were packed in boxes, unpack them, and spend approximately six (6) days or about one

hundred forty four (144) hours, and use almost two thousand five hundred (2,500) computer diskettes to copy Mike's database. These kind of lies by Mike are simply ludicrous.

15. November 1, 1996: This Respondent receives from Ms. Lapin for the first time a copy of the above-described letter of September 18, 1996, almost 6 weeks after it was supposedly written by Mike but less than 3 days after Tom Thornton faxed it to Ms. Lapin, asking me to present a written statement to the new charges contained in the letter that Ms. Lapin had already considered without my knowledge or response and referred to the grievance committee five (5) days before on October 25, 1996.

16. November 5, 1996: Mike Carricarte is allowed by Ms. Lapin to file a new Affidavit to "revise" his just submitted Affidavit of October 31, 1996, swearing that his database is "worth millions." This "revised" Affidavit that Ms. Lapin told me by phone she was allowing Mike to file, totally omits Mike's sworn statement of just 5 days before that his database is "worth millions."

17. December 12, 1996: Mike Carricarte betrays the memory of our brother, Louis, who was killed in Vietnam 33 years before at the age of 22, by using that sacred anniversary as a subterfuge to have a luncheon with me so that we can make peace. In fact, as detailed in my letter to Mike of December 26, 1996, (SR. 4) it is a setup for him to point me out to his Tae Kwon Do friend, Diego Perez, a former martial arts teacher of some of his children, whom I noticed was seated at a nearby table. Two nights later, at approximately 11 p.m. on December 14, 1996, this pathetic and cowardly martial

arts teacher attempted to lure me behind a corner of the tennis court adjacent to my condominium in order to kick and beat the living daylights out of me and then steal my jewelry in order to make it look like a mugging. This totally pusillanimous and deadly attack which could have left me a quadriplegic, or a paraplegic, or brain damaged, or dead did not succeed because God protected me that night and because I was legally armed. My dead brother in heaven may be able to forgive Mike Carricarte's infamy and treachery, but I cannot and never will because Mike is the worst example that I have ever seen of a human being that has been so twisted by, and filled with, hate and sadism that he is willing to use any means that his money can buy to destroy everyone who ever helped him loyally. Unfortunately, Ms. Lapin refused to let me appear before the grievance committee considering Mike's complaint to present my defenses and the Complaint was filed against me. It is sad that I was not allowed to appear before that committee to expose Mike's totally unbelievable and ridiculous perjury as I am doing now because the results would have been quite different.

18. June 4, 1998: At the Final Hearing of this case before Referee Lauren Levy Miller, my complainant/brother proceeded to repeatedly perjure himself when he knowingly lied about the existence of two sealed envelopes or indictments, one of which is for murder, that only he claims that the Dade State Attorney's Office has against Arnold Segredo. (R.107-113) In response to my Subpoena For Final Hearing Duces Tecum, the Custodian of Records for the Dade County State Attorney's Office testified before the Referee that

no such sealed envelopes or indictments have ever existed against Arnold Segredo. (R. 6-7)

Mike Carricarte also committed perjury when he testified under oath before the Referee that there had been an evaluation of Arnold Segredo in the ongoing litigation and that "The evaluation says that he is a con man and a thief." (R.118-120) Mike perjured himself again when he lied that "Adorno & Zeder has the evaluation" because no evaluation of Mr. Segredo has ever been done by anyone in any ongoing litigation. Mr. Segredo so testified under oath at the final hearing. (R. 119)

Mike Carricarte further committed perjury when he testified falsely under oath before the Referee that he had told the truth, the whole truth, and nothing but the truth in everything that he said to the Florida Bar in his sworn statement of January 7, 1997 when in fact he lied repeatedly regarding the same matters that he perjured himself about in the Final Hearing. (R. 138-139)

19. July 1, 1998: At a hearing called by Referee Lauren Levy Miller, she announced on the record that she had found sufficient evidence that this Respondent was guilty of a conversion of trust account funds and of disclosing information that exceeded that needed for the defense of the civil litigation filed by my brother's companies. But she emphatically replied to a question posed by me that she was not finding that I had stolen my brother's database that is worth millions or attempted to extort money from him. Notwithstanding that statement on the record, Bar Counsel prepared and

Referee Miller signed a Report finding that I had stolen the database and used it to extort money from my brother.

20. October 3, 1998: More than THREE (3) YEARS AND NINE (9) MONTHS have passed since the last week of December, 1994 when I allegedly stole Mike Carricarte's database that is "worth millions," supposedly "threatened" to extort money from him and "negotiate" his multi-million dollar database with his competitors, and still neither Mike nor any of his attorneys have filed even one complaint with a single law enforcement agency anywhere on this planet. They do not want to subject themselves to the legal consequences of filing a false police report. Needless to say, not one of these highly paid legal experts has ever made a single request or demand that I immediately return this multi-million dollar database.

21. The record in this entire case does not contain a single allegation or complaint by the Florida Bar and/or any testimony, witness or evidence whatsoever that this Respondent was or is suffering from any mental and/or psychological problems that would require an evaluation by Florida Lawyer's Assistance, Inc. (FLA., Inc.). Such an unsupported request by the Bar, made for the very first time at the conclusion of the Final Hearing of June 4, 1998, is simply a response to my brother's totally irrational belief that anyone who opposes or disagrees with him in any way must have mental or psychological problems because no sane person would dare to defy or disobey any of his orders or wishes.

22. Bar Counsel Cynthia Lindbloom argued at the final hearing of my case on June 4, 1998 that the Florida Bar had the right to review and prosecute me for disclosing information that the Bar considered to exceed that needed for the defense of the civil litigation between my brother's companies and I despite the fact that none of the trial or appellate judges considering that litigation found anything improper that should be referred to the Bar. But as evidenced by her letter of June 3, 1998 to one of my witnesses in the case, Wayne Dennis, (SR. 5) she can just as easily take the diametrically opposite position when the Bar does not wish to review a complaint:

> "However, the fact remains that this matter was litigated in court, and in that court a decision was made by the presiding judge. That judge was in the position to determine the credibility of witnesses and give the proper weight to the evidence presented. The Florida Bar will not second guess that court nor will it attempt to relitigate matters that were presented."

That was precisely the argument that I made before the referee at the final hearing of my case.

POINTS ON APPEAL

I

WHETHER THERE IS ANY CREDIBLE EVIDENCE IN THIS RECORD THAT SUPPORTS THE FINDINGS OF THE REFEREE IN COUNT II, PARAGRAPHS 24 THROUGH 27, THAT THE RESPONDENT THREATENED TO SELL AND/ OR REVEAL AMEDEX'S DATABASE TO ITS COMPETITORS UNLESS AMEDEX RELEASED $25,000.00 TO THE RESPONDENT FROM THE MONEY THAT RESPONDENT WAS HOLDING IN HIS TRUST ACCOUNT, AN ACCUSATION THAT WAS FIRST MADE BY MY COMPLAINANT/BROTHER MORE THAN ONE (1) YEAR AND TEN (10) MONTHS AFTER IT ALLEGEDLY HAPPENED AND HAS NEVER BEEN REPORTED TO THE POLICE?

II

WHETHER IT IS A VIOLATION OF THE RESPONDENT'S CONSTITUTIONAL RIGHTS TO DUE PROCESS OF LAW AND FUNDAMENTAL FAIRNESS FOR THE REFEREE TO RECOMMEND IN SECTION IV OF HER REPORT THAT THE RESPONDENT SUBMIT TO A PSYCHOLOGICAL/ MENTAL EVALUATION IN THIS CASE, WHERE IN MORE THAN TWO (2) YEARS OF DISCIPLINARY PROCEEDINGS THE FLORIDA BAR HAS NEVER MADE A SINGLE ALLEGATION AND/OR COMPLAINT AND/OR PRESENTED ANY TESTIMONY OR EVIDENCE WHATSOEVER THAT THIS RESPONDENT, WHO HAS REPRESENTED HIMSELF COMPETENTLY AND EFFECTIVELY IN ALL OF THESE PROCEEDINGS, WAS OR IS SUFFERING FROM ANY MENTAL AND/OR PSYCHOLOGICAL PROBLEMS?

III

WHETHER IT WAS ERROR FOR THE REFEREE TO FIND IN COUNT II, PARAGRAPH 23, OF HER REPORT THAT THE RESPONDENT DISCLOSED INFORMATION THAT FAR EXCEEDED THAT NECESSARY FOR THE DEFENSE OF THE ONGOING LITIGATION WHEN FIVE (5) DADE COUNTY CIRCUIT COURT JUDGES AND THREE (3) THIRD DISTRICT COURT OF APPEALS JUDGES DID NOT FIND THAT THE RESPONDENT'S DEFENSE OF THE LITIGATION INVOLVED ANY WRONGDOING OR ANY OTHER CONDUCT THAT SHOULD BE REFERRED TO THE FLORIDA BAR FOR DISCIPLINARY ACTION?

SUMMARY OF THE ARGUMENT

The chronology of the charge made for the very first time anywhere on October 31, 1996 by my complainant/brother, Mike Carricarte, that I stole Amedex's database that is "worth millions" one (1) year and ten (10) months before on the last week of December, 1994 after he fired me unexpectedly on December 26, 1994 at a time when I was totally computer illiterate and while all of Amedex's computer hardware and software were packed in boxes because the company had moved to a new building is totally incredible and a complete lie on his part. It is important to consider that less than ten (10) days after Mike says that I extorted $25,000.00 from him, he signed a severance pay agreement with me in which he wished me the "very best," expressed intentions of only helping me, never requested that I return his company's "multi-million" dollar database, and has not reported the alleged theft and extortion to any police agency in the more than three (3) years and nine (9) months that have transpired. To put it very bluntly, I was framed by my own brother on totally false, fabricated, and incredible charges of crimes that never happened, which I did not and could not have committed based on the clear lack of credible evidence. If anyone had told me that after 33 years of practicing law in Miami, this type of a frame-up could happen to anyone, I would not have believed it but it has happened to me and it was concocted by my brother who actually hired a Tae Kwon Do hit man to ambush and kill me, his own flesh and blood.

In more than two and one half years of these disciplinary proceedings the Florida Bar has never presented any claim or charge that I have any mental or psychological problems of any sort, has not used any lay or expert witness to testify as to any such problems, and made the request out of the blue for the very first time at the conclusion of the final hearing of June 4, 1998 without any basis in the testimony, evidence, law or charges against me. While this Supreme Court can order any lawyer who is a member of the Florida Bar to do or submit to just about anything because this tribunal is the final word as to Florida Bar matters in this state, it is unfair and unjust to order a lawyer to submit to a psychological/mental evaluation without any reason whatsoever on the record.

It is a terrible idea to have the Florida Bar act as an additional judge to second guess the decisions of the trial and appellate judges who rule in a pending litigation by interpreting the applicable Bar rules based on whether or not they want to essentially overrule the judges who have not referred any actions by a trial lawyer to the Bar. It is especially unfortunate that in this case, Bar Counsel Cynthia Lindbloom used the Bar rules to prosecute me for excessive disclosure of information but told another complainant in another matter that the Bar would not second guess the trial court or attempt to relitigate matters that were presented which is exactly what they have done in this case. To interpret the same Bar rules in two diametrically opposite manners gives the Bar an extremely arbitrary weapon to help some lawyers and punish others in very similar factual situations.

ARGUMENT

I

THERE IS NO CREDIBLE EVIDENCE WHATSOEVER IN THE RECORD THAT SUPPORTS THE FINDINGS OF THE REFEREE IN COUNT II, PARAGRAPHS 24 THROUGH 27, THAT THE RESPONDENT THREATENED TO SELL AND/OR REVEAL AMEDEX'S DATABASE TO ITS COMPETITORS UNLESS AMEDEX RELEASED $25,000.00 TO THE RESPONDENT FROM THE MONEY THAT RESPONDENT WAS HOLDING IN HIS TRUST ACCOUNT, AN ACCUSATION OF A "MULTI-MILLION DOLLAR THEFT/EXTORTION" THAT WAS FIRST MADE BY MY COMPLAINANT/BROTHER MORE THAN ONE (1) YEAR AND TEN (10) MONTHS AFTER IT ALLEGEDLY HAPPENED AND STILL HAS NOT BEEN REPORTED TO ANY POLICE AGENCY ANYWHERE MORE THAN THREE(3) YEARS AND NINE (9) MONTHS LATER.

It is simply not believable to any reasonable person of normal experience that if I had "stolen" my brother's multi-million dollar database in the last week of December, 1994 as he claimed for the very first time ever on October 31, 1996, he would have signed a severance pay agreement with me just a few days after the "theft" on January 6, 1995 in which he wrote in his own hand: "We all wish you the very best and we have intentions of only helping you." It is even more incredible for anyone to believe that if on January 6, 1995 I had in my possession anything that Mike wanted returned when he specifically authorized me in our agreement to deduct the $25,000 in severance pay from the money in my trust account, he simply would not have demanded that I return that property immediately. Mike did not require that I return any multi-million dollar database on January 6, 1995 because it is simply a lie that I stole such a database, or threatened to sell and/or reveal

Amedex's database unless Amedex released $25,000.00 to me from the money that I was holding in my trust account.

An additional point that has always puzzled me as to how unbelievable Mike's lies really are as to my alleged theft and extortion of trust account funds is that if a thief had in his possession a database that is worth millions and was really threatening to sell it to the owner's competitors why would that thief not keep all of the owner's $110,000.00 instead of just 22.7% of the money? And why on earth would the owner of the purloined multi-million dollar property never ask for its return as has happened in this case? The reason why this did not happen is that my agreed upon severance pay was $25,000.00 and the rest of the trust funds was returned to my brother.

The really sad mistake that I made in this case is that I never in my wildest dreams ever thought that my own brother would be capable of fabricating totally false charges and accusations against me or that he would perjure himself repeatedly in this case in order to frame me, his own brother. Similarly, it simply boggles my mind and soul that my own flesh and blood hired a Tae Kwon Do hit man to ambush me, his brother, and beat me horribly or possibly kill me if that man had kicked me in the head. I never realized that Mike was capable of such hatred and evil.

A quick reading of the testimony of my brother and of his son at my final hearing will readily disclose all kinds of illogical and unbelievable lies - repeatedly exposed by my cross-examination- that they told about this imaginary "theft" of their database that is "worth millions" in the last week of

December, 1994 that still has never been reported to any police department and that neither my brother nor anyone acting on his behalf has ever demanded or even requested that I return.

Such "evidence" is simply not credible and is clearly insufficient to find me guilty of a "theft" and extortion that never happened, that I did not and could not have committed when one considers the chronology of this last minute fabricated accusation of my brother, whose testimony at my final hearing is simply not worthy of belief.

In Section III RECOMMENDATION AS TO GUILT of the Report, the Referee finds in paragraph 3 "that as to Count II, the Respondent has violated Rule 5-1.1(a) (money entrusted to an attorney for a specific purpose is held in trust and must only be applied to that purpose) of the Rules Regulating Trust Accounts." But that rule also allows a lawyer to retain money from funds in his trust account for certain purposes.

In the instant case, my brother and I signed an agreement (R. 18) specifically authorizing me to retain severance pay from my trust account and Mike added in his own hand that he wished me the very best and had intentions of only helping me. I submit that if a lawyer cannot trust his own brother that I had grown up with and known for over fifty (50) years who can he trust.

II

IT IS A VIOLATION OF THE RESPONDENT'S CONSTITUTIONAL RIGHTS TO DUE PROCESS OF LAW AND FUNDAMENTAL FAIRNESS FOR THE REFEREE TO RECOMMEND IN SECTION IV OF HER REPORT THAT THE RESPONDENT SUBMIT TO A PSYCHOLOGICAL/ MENTAL EVALUATION IN THIS CASE, WHERE IN MORE THAN TWO (2) YEARS OF DISCIPLINARY PROCEEDINGS, THE FLORIDA BAR HAS NEVER MADE A SINGLE ALLEGATION AND/OR COMPLAINT AND/OR PRESENTED ANY TESTIMONY OR EVIDENCE WHATSOEVER THAT THIS RESPONDENT, WHO HAS REPRESENTED HIMSELF COMPETENTLY AND EFFECTIVELY IN ALL OF THESE PROCEEDINGS, WAS OR IS SUFFERING FROM ANY MENTAL AND/ OR PSYCHOLOGICAL PROBLEMS.

In the old Soviet Union, people who opposed the Communist regime were sent to mental hospitals on the theory that only those with mental problems could be anti-Communists. My brother has a similar erroneous belief that anyone who opposes him and does not beg his forgiveness after he has abused them, framed them, or tried to have them killed must have mental or psychological problems. That explains why Mike would insist that the Bar recommend to the Referee at the close of the final hearing that I submit to a psychological/mental evaluation in this case.

Since these disciplinary proceedings started on or about February 9, 1996, or more than two (2) years and seven (7) months ago, the Bar has never filed a single charge or accusation that this Respondent, who has represented himself competently in all of these proceedings, is suffering from any kind of mental or psychological problems of any kind. Certainly, I do not now and have never had any problems of an emotional or psychological nature or with alcohol or drugs that would now require an evaluation by

Florida Lawyer's Assistance, Inc. (FLA., Inc.). During these proceedings, the Bar has never presented a single witness of any kind or any evidence of any sort that would warrant an evaluation in this case.

Certainly, due process under Article I, Section 9 of the Constitution of the State of Florida and the 5th and 14th amendments of the Constitution of the United States requires some rational basis to allow any governmental body to order any person to undergo a psychological evaluation.

Although "due process" is not capable of a precise definition, Florida courts have long described it as a course of legal proceedings in accordance with those rules and principles established by law for the protection and enforcement of private rights. State ex rel. Gore v. Chilllingworth, 171 So. 649 (Fla. 1936); Smetal Corp. v. West Lake Inv. Co., 172 So. 58 (Fla. 1936). Due process essentially requires that procedures be fair, that is, interested parties must receive notice and a reasonable opportunity to be heard, in an orderly proceeding adapted to the nature of the case, before judgment is rendered. Scull v. State, 569 So. 2d 1251 (Fla. 1990); SEC v. Elliot, 953 F2d 1560 (CA 11 Fla. 1992).

In the instant case, the Florida Bar first raised the issue about a psychological/mental evaluation of the Respondent after both sides had rested at the final hearing of June 4, 1998, or approximately two (2) years and four (4) months after the beginning of these disciplinary proceedings. This Respondent was totally surprised by the Bar's completely unsupported last-minute allegations of some unknown reason for a psychological evaluati-

on by the organization that evaluates lawyers who are disciplined for drug or alcohol related problems. Without any prior notice of the Bar's position, I was deprived of my right to present any testimony as to my good and sound mental condition. That procedure by the Bar is a clear violation of the fundamental conception of fairness that this Respondent is guaranteed by the due process clauses of the constitutions of the United States and of the State of Florida.

III

IT WAS ERROR FOR THE REFEREE TO FIND IN COUNT II, PARAGRAPH 23, OF HER REPORT THAT THE RESPONDENT DISCLOSED INFORMATION THAT FAR EXCEEDED THAT NECESSARY FOR THE DEFENSE OF THE ONGOING LITIGATION WHEN FIVE (5) DADE COUNTY CIRCUIT COURT JUDGES AND THREE (3) THIRD DISTRICT COURT OF APPEALS JUDGES DID NOT FIND THAT THE RESPONDENT'S DEFENSE OF THE LITIGATION INVOLVED ANY WRONGDOING OR ANY OTHER CONDUCT THAT SHOULD BE REFERRED TO THE FLORIDA BAR FOR DISCIPLINARY ACTION.

The Respondent submits to the Honorable Justices of the Florida Supreme Court that they have probably never considered a case in which an individual as full of hatred and just plain evil as my brother, Mike Carricarte, has tried to totally destroy his own flesh and blood by using the court system and the Florida Bar to do so. Since he fired me on December 26, 1994 at the age of 55, he has ruined me financially by driving me into bankruptcy with multiple lawsuits, I have been unemployed for almost four (4) years, and he has attempted to frame me by fabricating theft and extortion charges that are totally false.

In the legal environment created by the sheer viciousness of my brother, this attorney had to defend himself very tenaciously. This is the type of litigation that the overwhelming majority of lawyers never even dream about and, especially after Mike sent his Tae Kwon Do hit man after me, I have feared for my life and safety. If anyone thinks that I am being too extreme, please read briefly the testimony of my own brother at my final Bar hearing and consider the incredible lies that he told under oath about the nonexistent first degree murder envelopes (indictments) that the Dade County State attorney has against Mr. Segredo (a complete lie) (R. 6-7), Mike's total fabrication of a nonexistent evaluation that says that Mr. Segredo is a con man and a thief, and his delusional lie that Adorno & Zeder has the evaluation. (R. 118-120) So, I submit that this case should be considered with that background in mind and a complainant who demonstrably and repeatedly perjured himself in this case should be sanctioned and not allowed to have a license to lie.

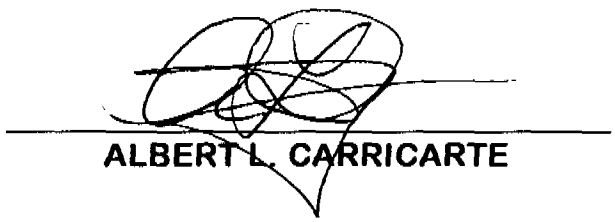
Sometimes in this life lawyers become involved in cases where they have to fight much harder and more tenaciously than in ordinary every day litigation. This was such a case for me and I had to fight accordingly.

CONCLUSION

Based on the foregoing facts, arguments and authorities, the Respondent respectfully requests: (1) that this Honorable Court reverse the findings of the Referee that the Respondent threatened to sell and/or reveal Amedex's database to its competitors unless Amedex released $25,000.00 to the Respondent from the money that I was holding in my trust account because there is no credible evidence on the record to support that charge; (2) that this Court reverse the recommendation of the Referee that the Respondent be ordered to submit to an evaluation by Florida Lawyer's Assistance, Inc. because there is no basis on the record to support such a recommendation; and (3) that this Court reverse the finding of the Referee that the Respondent disclosed information that far exceeded that necessary for the defense of the ongoing litigation because in this particular case the extraordinarily difficult circumstances that I encountered from my brother required them.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy was mailed to Cynthia Lindbloom, Bar Counsel, The Florida Bar, 444 Brickell Avenue, Suite M-100, Miami, Florida 33131 and to John T. Berry, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399 this 5th day of October, 1998.



ALBERT L. CARRICARTE