

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

097

THE FLORIDA BAR,

Complainant,

vs.

ALBERT LOUIS CARRICARTE,

Respondent.

Supreme Court Case
No. 90,604

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

FILED

SID J. WHITE

DEC 14 1998

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

REPLY BRIEF OF RESPONDENT

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NOTICE OF ADOPTION

The Respondent respectfully adopts the Introduction, Statement of the Case, Statement of the Facts and the Summary of the Argument as stated in my initial brief. All emphasis is added unless specifically mentioned.

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?

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 respectfully requested that this Honorable Court consider all of the accusations made against me by my complainant/brother, Michael A. Carricarte, his son, Mike, Jr., a high school graduate who as president of his father's company is totally dependent on his father for his lavish life style, and his close friend, Byron Williams, with the clear understanding that Mike's allegations that I stole his database that is "worth millions" and used it to extort \$25,000.00 from him in the last week of December, 1994 did not materialize for the very first time ever until Mike filed an affidavit with the Bar on October 31, 1996, or one (1) year and ten (10) months after this multi-million dollar "theft" and "extortion." Of course, there is absolutely no mention of such a "theft" and "extortion" in the very detailed Florida Bar Complaint that Mike filed against me on February 9, 1996 or eight (8) months before Mike's affidavit. Today, almost four (4) years after this "theft" and "extortion," neither Mike nor anyone acting on his behalf, including his

lawyers, has ever reported this horrible "crime" to any police agency anywhere on this planet or made even a single demand or request that I return such an invaluable business asset that Mike testified could destroy his business. The reason for almost four (4) years of inaction is that all of the foregoing accusations are lies fabricated by my brother in his despicable attempt to frame me and destroy my ability to practice law.

What really happened - the truth - is that on January 6, 1995 or about one (1) week after I had, according to Mike's own October 31, 1996 affidavit, allegedly stolen Mike's multi-million dollar database in the last week of December, 1994 and used it to extort \$25,000.00 from him, Mike and I signed an agreement for severance pay authorizing me to retain \$25,000.00 from my trust account. This agreement, which was worked out by Mike, Jr. and I in two telephone conversations without any threats of any sort, was signed by me at my home and by Mike at his office without my being present, and Mike added in his own hand: "We all wish you the very best and we have intentions of only helping you." He made absolutely no mention of any theft or extortion of any database that is "worth millions" and did not request or demand that I return his database because there was never any theft or extortion. (R.18) It never happened.

In order to facilitate and expedite an understanding by this Honorable Court of the outrageous and prejudicial extent of Mike Carricarte's perjury in this case, I have prepared and attached a Supplemental Record with a List of the Lies Testified To Under Oath by the Complainant, Michael A. Carricarte,

To The Florida Bar on January 7, 1997 and at my Final Hearing on June 4, 1998 (SR. 3-10) which total one hundred and seven (107) lies under oath and take almost eight (8) pages to list. This list is clear and convincing evidence that my brother is a pathological liar who totally lacks the ability to tell the truth under oath and raises a fundamental question: Just how many lies under oath is Mike Carricarte allowed to tell in order to convict me in this case? I respectfully submit that the one hundred and seven (107) lies told by my brother under oath, not including the lies that Mike told in his Affidavits of October 31 and November 5, 1996, are totally intolerable and far beyond what any court should tolerate or condone.

Mike Carricarte is lying when he testified at my final hearing that I ever threatened him, his children, or anyone else. It never happened. Mike is lying when he testified that I knew about his travel schedule to Venezuela and threatened his family members who were traveling with him. It never happened. His son, Mike Jr., is lying when he testified that I made telephone death threats against him in the last week of December, 1994, which, of course, he never reported to the police or requested that the police install a tape recorder on his phone to simply record these "threats." The reason is that they never happened.

Mike is lying when he testified at my final hearing that the Dade County State Attorney's Office has a sealed indictment for murder against my friend and client, Arnold Segredo. The Custodian of Records for the State Attorney's office testified at my final hearing that such an indictment does

not exist. Mike is lying when he testified that in the ongoing litigation there was a psychological evaluation of Mr. Segredo which found that he is a "con man and a thief." Mr. Segredo testified at my final hearing that he has never been psychologically evaluated and, of course, neither Mike nor his lawyer could produce such an evaluation because it is a figment of my brother's imagination. Of course, Mike's total lie is actually absurd because who but a delusional liar like him would testify that any psychologist would write an evaluation using such non-psychological terms as "con man" and "thief."

Mike is lying when he testified that I ever flaunted or showed a gun either at our luncheon meeting at a crowded restaurant on December 12, 1996 or anywhere in his office where about 120 people were employed. Mike's testimony that I showed or insinuated my gun around his office and made passes at his female employees in the four (4) years that I worked for him are contemptible lies that never happened just like his fictitious and non-existent sealed first degree murder indictment against Mr. Segredo and totally imaginary psychological evaluation of Segredo in the ongoing litigation that found that he was a "con man and a thief." At my final hearing, even after the Custodian of Records from the State Attorney's Office testified that no indictment of any sort against Mr. Segredo ever existed, Mike actually continued to lie under oath about it. First he lied that he had been told by someone at the State Attorney's Office that such a murder indictment existed and then he swore that I had told him that there were two sealed indictments (R.48) and that Segredo had told him that "...they had found a person in a

canal and that the F.B.I. and the State Attorney had gone to see him and he says one of those envelopes is for murder." (R.52) Of course, Mike was telling so many lies at my final hearing that he finally swore at R.91, lines 22-23: "I didn't say you were showing the gun." That statement is the truth; I have shown my gun only in Mike's pathologically delusional mind.

Mike's numerous lies under oath at my final hearing are so totally false, loony and pathological that they clearly demonstrate that it is he that needs a psychological evaluation and extensive psychological treatment. Please take just a few minutes to read the transcript of Mike's testimony at my final hearing of June 4, 1998 and to the Florida Bar on January 7, 1997 together with the list detailing the one hundred and seven (107) lies that Mike told under oath (SR. 3-10) because his numerous lies are so irrational, absurd and almost comical that they evince a very pathological liar.

In fact, the only Carricartes who have ever displayed a gun and used it to threaten other people are Mike Carricarte and his son, Mike, Jr., who on June 25, 1989 used a 12 gauge shotgun to resolve a minor dispute with an unarmed motorist and his wife. According to the attached 6 page METRO-DADE POLICE DEPARTMENT Offense-Incident Report number 314341J, Mike's son: "...ran into the house and responded with a shotgun. The son then handed his father the shotgun." The motorist and his wife alleged that Mike Carricarte pointed the shotgun at them. The undisputed fact is that Mike Carricarte used a loaded 12 gauge shotgun to settle an argument on the street with an unarmed man and woman. (SR. 11-16)

This police report is attached to contradict the totally false allegations of display of guns made against me by my brother who is obsessed with destroying me by imputing to me his own reckless use and display of a gun. I have never displayed, used or exhibited any gun around my brother, or his family, or his office, or anywhere else in my life and such perjured delusions only exist in the complete lies of my brother.

In his perverse and pathological attempt to destroy me, my brother Mike has invented and fabricated a fictitious Albert Carricarte that does not now and has never existed, who is a total figment of the mind of Mike Carricarte, an individual who repeatedly committed flagrant and demonstrably false perjury in this case. Excuse me, but if I had really stolen Mike's computer database that is "worth millions" and threatened to sell it to his competitors and destroy his business in the last week of December, 1994, does anyone really believe that almost four (4) years later in December, 1998 someone on Mike's behalf would not have asked or demanded that I return such a valuable asset? The reason no one ever has is that it never happened.

Please take a few minutes to read the testimony of my witness, Wayne Dennis, at my final hearing. Mr. Dennis has known Mike for over 30 years and he testified in detail about how Mike would totally lose control at his office and rant, rave and scream obscenities at his employees. It is my brother who is out of control and who has told so many incredible lies about me that his testimony is totally unworthy of any credibility.

What is truly sad and tragic about my brother, Mike, is that he has corrupted and distorted this grievance proceeding with his many lies and loony perjury about me and Mr. Segredo. Mike was not satisfied to just have the Bar prosecute me for the ten (10) faxes that I admitted I sent and for allegedly disclosing more information that was required for me to defend his multiple lawsuits. No, Mike had to invent the *coup de grace*, by totally fabricating ridiculous lies about a fictitious multi-million dollar theft and extortion, about my display of guns, threats, passes at his female employees, a delusional and fictitious first degree murder indictment and psychological evaluation, sealed envelopes at the State Attorney's office, knowledge of his travel plans months after I had been fired, and whatever demonstrably false and totally incredible perjury he could concoct to destroy me.

It is respectfully suggested that if this Honorable Court chooses not to reject or punish Mike's multiple perjury by totally reversing the Report of the Referee, then the administration of justice requires that Mike Carricarte and/or the Florida Bar immediately contact the Dade County State Attorney's office and the F.B.I. in Miami so that they can arrest and prosecute my client, Mr. Segredo, on that sealed indictment for first degree murder that exists only in the delusional mind of Mike Carricarte. There is no doubt in my mind that the F.B.I. will just be thrilled to learn that Mike lied under oath at my final hearing when he testified that they had found a person in a canal and gone to see Mr. Segredo. (R.52) Once again, Mike committed perjury under

oath with impunity because it never happened; it is simply another delusional lie told by Mike.

Additionally, Mike Carricarte and/or the Bar should immediately obtain a copy of the fictitious psychological evaluation of Mr. Segredo concluding that he is a "con man and a thief" that Mike testified under oath at my final hearing was in the possession of the law firm of Adorno & Zeder in Miami. (R. 59) Of course, both the "murder indictment" and the "psychological evaluation" are pure delusional fabrications and demonstrable perjured testimony by Mike Carricarte; they do not now and have never existed, but neither the Referee nor the Florida Bar took any action or imposed any sanctions upon Mike for committing such flagrant perjury in my final hearing. In fact, they chose to believe all of Mike's ridiculous lies. This Honorable Court should not ignore or condone such an outrageous abuse of the oath of a witness to testify truthfully.

Most respectfully, Your Honors, has Mike Carricarte been granted a license to lie and commit totally unbelievable and demonstrably false perjury in this case without any fear of punishment or consequences? Is this really what a Florida Bar grievance proceeding is supposed to be with the complainant inventing and telling as many lies under oath as he wishes, at least 107 lies, to convict the accused attorney? Surely, no one can have the slightest doubt that my brother lied and testified falsely under oath demonstrably and repeatedly in this matter and, yet, he has gotten away with it so far. I pray that this court will stop Mike and punish his perjury by

reversing the decision of the Referee to let the world know that perjury will not be tolerated or condoned.

On May 18, 1998, about three (3) weeks before my final hearing, the undersigned Respondent filed a Motion To Hold The Complainant, Michael A. Carricarte, In Contempt Of Court For Committing Willful Perjury In His Sworn Statement To The Florida Bar On January 7, 1997 and requested that the Referee hold a hearing on my motion. Referee Judge Lauren Levy Miller refused to hear the motion and Mike Carricarte proceeded to lie under oath even more extensively at my final hearing than he had at his sworn statement to the Bar seventeen (17) months before. Now, I respectfully request that this court issue a Rule To Show Cause Why Michael A. Carricarte Should Not Be Held In Contempt Of Court For His Willful Perjury in this case. To ignore my brother's extensive and demonstrably false perjury is to condone and approve it and to grant Mike Carricarte a license to lie under oath.

Is there any doubt in anyone's mind that if I, the accused attorney, had lied under oath just once in this case, the Bar would not have moved for the issuance of a Rule To Show Cause Why I Should Not Be Held In Contempt Of Court? But the complainant, Mike Carricarte, demonstrably lied under oath more than one hundred and seven (107) times in this case. Does Mike's license to lie under oath just continue in full force and effect? Fortunately, all of Mike's loony lies under oath in this case are preserved on this record for all the world to see and he cannot lie about having told them.

CONCLUSION

Based on the foregoing facts, arguments and authorities, and, more importantly, the highly prejudicial and extensive, clear and demonstrable perjury committed by the Complainant, Michael A. Carricarte, and his witnesses at all stages of these Bar proceedings, the Respondent respectfully requests that this Honorable Court reverse all of the findings and recommendations of the Referee in order to punish the Complainant, Mike Carricarte, for having lied under oath repeatedly and extensively. It is most respectfully submitted that this Honorable Court cannot tolerate or ignore the amount or extent of the perjury committed by the Complainant herein because to do otherwise would send the reprehensible message that a liar and a perjurer like Mike Carricarte has a license to lie under oath whenever and however he wants. If this court does not stop Mike Carricarte's perjury, he will continue to lie, and lie, and lie under oath, and then lie under oath about all the lies that he told as he did in this case more than one hundred and seven (107) times.

The people of Florida need to be reminded that this Honorable Court will not allow or tolerate such a shameful display of perjury and lying under oath as Mike Carricarte has committed in this case. It is respectfully requested that this court issue a Rule To Show Cause Why Michael A. Carricarte Should Not Be Held In Contempt Of Court For His Extensive Perjury in this case.

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 Anthony Boggs, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300 this 12th day of December, 1998. I further certify that the size and style of type used in the Respondent's Reply Brief is 12 point Arial Rounded MT Bold.

A handwritten signature in black ink, appearing to read "ALBERT L. CARRICARTE", is written over a horizontal line. The signature is somewhat stylized and scribbled.

ALBERT L. CARRICARTE

reply brief
of respondent