

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,
Complainant/Appellee,

CASE NO: SC 95011

-vs-

TFB File Nos: 97-51,273 (17G)
97-51,484 (17G)

EDWARD KLEIN,
Respondent/Appellant.

RESPONDENT - APPELLANT'S REPLY BRIEF

EDWARD KLEIN
Respondent - Appellant
9803 NW 67 Court
Tamarac, FL 33321
954/726-3828

CERTIFICATE AS TO FONT & STYLE

Pursuant to this Court's Administrative Order, in Re: Reply Brief filed in the Supreme Court of Florida, the undersigned Appellant hereby certifies that this Reply Brief is produced in a font that is 14 point proportionately scaled, Times New Roman type.

RESPONDENT'S REPLY TO THE FLORIDA BAR'S ANSWER BRIEF

This Respondent submits that the Referee's report is clearly erroneous and not supported by the evidence and accordingly The Florida Bar's request for an order disbaring this Respondent should be denied.

The Florida Bar states on page 14 of its Brief that disbarment is the appropriate sanction for a lawyer who, among other things, abuses the judicial system, commits fraud upon the court, violates court orders and engages in conflicts of interest to advance his own personal agenda to the detriment of his clients.

The Florida Bar and the Referee have accused this Respondent of violation of all of the above without any testimony, exhibits, or any evidence to support their finding.

On page 15 of The Bar's Answer Brief under the headline, "The misconception raised by the Respondent is the statement that the linchpin of Respondent's defense is the order of clarification which allowed Westwood to ignore the Federal and state court injunctions and devoted the next two pages on the issue of the validity of the order of clarification.

This Respondent submits that it is basic law that the applicable and enforceable interpretation of the subject deed restrictions must be decided by the courts and not by The Florida Bar or the Referee.

No Federal or state court has declared that the order of clarification after an evidentiary hearing or trial to be invalid.

I will briefly reply to all of the counts in The Florida Bar's Petition for Sanctions.

Count I - See Respondent's Initial Brief.

Count II and III - See Respondent's Initial Brief.

The Florida Bar and the Referee allege that the sale of Bresnick house was thwarted by the Respondent's inclusion into the sales contract of terms and conditions

that were meant to prevent a sale of the home to Gajewski.

There was no testimony or exhibits submitted at the hearing on this issue.

Count IV - See Respondent's Initial Brief.

Judge Moe's award of attorney's fees was reversed by the 4th District Court of Appeals.

Count V - See Respondent's Initial Brief. In the event the Referee did not see a copy of the cost judgment which was submitted at the hearing, a copy of the cost judgment is attached hereto.

Count VI - The Florida Bar withdrew this count.

Count VII - See Respondent's Initial Brief.

Ruth Flaischer was Westwood treasurer, not Ravitch.

Query to Kevin Tynan, Staff Counsel: If you were in Respondent's shoes, what would be your response?

Respondent's alleged theory in support of his statement that the validity of the order of clarification must be decided by the courts and not by The Florida Bar is a position taken by The Florida Bar. See letter dated March 7, 1997 addressed to Mark Menzano and signed by Lorraine C. Huffman, Assistant Staff Counsel, Florida Bar. A copy of the letter is attached hereto.

Additionally Rule 3-4.04 states "Nor shall the findings, judgments or decree of any court in civil proceedings necessarily be binding in disciplinary proceedings."

COUNT IX - See Respondent's Initial Brief.

The Referee completely ignored sworn affidavits from the entire Board of Directors that Respondent commenced an action against Mark Menzano with the direction, knowledge and permission of the Board.

In proceedings to disbar an attorney, where evidence is conflicting there must be

clear preponderance against him to warrant his disbarment. Petition for Revision of or Amendment to Integration Rule of Florida Bar 1958, 103 So.2d 873.

Count X - See Respondent's Initial Brief.

The Referee is not a court of competent jurisdiction. There was no evidentiary hearing or trial before the Referee on the issue of the validity of the order of clarification.

Count XI - See Respondent's Initial Brief.

The Respondent's personal interest in this litigation is no different from any member of the Board of Directors or any member of the Association.

The Florida Bar and the Referee has failed to prove that the Respondent had a personal interest in the outcome of the litigation, different over and above and above the personal interests of the Board of Directors.

Count XII - See Respondent's Initial Brief.

The Referee's report is contrary to the weight of the evidence, the evidence being affidavits of all of the Board members that they authorized and directed this Respondent to prepare and file a complaint against Menzano.

Count XIII - See Respondent's Initial Brief.

The Referee's report is clearly erroneous. He disregarded affidavits from the entire Board of Directors that Respondent filed the Menzano lawsuit with the knowledge, consent and direction of the entire Board of Directors.

Count XIV - See Respondent's Initial Brief.

The Referee found that Respondent had not informed his clients that he was going to file a lawsuit against the Menzanos . This report is erroneous and contrary to the evidence submitted at the hearing. See affidavits from all Board members that Respondent was directed by the Board to commence the lawsuit.

Count XV - See Respondent's Initial Brief. The cases cited by The Florida Bar

as cause for lawyer discipline are violations of criminal statutes, not civil.

Count XVI - See Respondent's Initial Brief. The Florida Bar failed to prove or submit any proof or evidence at the hearing that assets were transferred from one corporation to another corporation. Neither does the bankruptcy trustee claim any transfer of assets. The bankruptcy fraud alleged by the trustee is creating an alter ego corporation. These cannot be a fraud if there was no transfer of assets. The ability to levy assessments is not an asset. The only assessment permitted is for maintenance of the club house and common grounds. The bankruptcy proceedings are concluded and a judgment has been entered against the debtor corporation, not against the homeowners and members of the corporation.

Count XVII - See Respondent's Initial Brief. The Florida Bar has failed to address this Count.

CONCLUSION

The Florida Supreme Court should dismiss The Florida Bar's complaint, including all of the Referee's recommendations, and award the Respondent his costs in defending this action.

Respectfully submitted

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed, via U.S. mail, postage prepaid, to Kevin Tynan, Esq. And Joel M. Klaitz, Esq., The Florida Bar, 5900 North Andrews Avenue, Suite 835, Fort Lauderdale, FL 33309, and Billy Hendriz, Director of Lawyer Regulation, The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32395-2300 on February 24, 2000.

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