IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

vs.

EDWARD KLEIN,

Respondent.
_____/

Supreme Court Case No. 95,011

The Florida Bar File Nos.
97-51,273(17G)
97-51,484(17G)

PETITION FOR REVIEW

INITIAL BRIEF OF RESPONDENT

Edward Klein, Respondent
9803 N.W. 67th Court
Tamarac, FL 33321
(954) 726-3828
Florida Bar No. 0650897

IN THE SUPREME COURT OF FLORIDA

(Before a Referee)

Case No. 95-011

CERTIFICATE OF INTERESTED PERSONS

The following is a complete list to the best knowledge of the Respondent, of persons who have, or may have, an interest in this case:

Honorable John D. Wessell, Referee

Kevin P. Tynan, Bar Counsel, The Florida Bar

Billy Hendrin, Director of Lawyer Regulation, The Florida Bar

Edward Klein, Respondent

STATEMENT REGARDING ORAL ARGUMENT

The Respondent respectfully requests oral argument because of The Florida Bar's continuing allegations that the Respondent is causing harm to society, even to this day.

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STATEMENT OF THE CASE AND OF THE FACTS

In or about March 1, 1999, a seventeen (17) Count Complaint was served upon Edward Klein, Respondent, by The Florida Bar.

Respondent, Edward Klein, is and at all times mentioned was a member of The Florida Bar and subject to the disciplinary rules of The Florida Bar.

Respondent is 92 years old and retired.

On or about March 15, 1997, one Mark Menzano, who resides at 9705 N.W. 67th Street, Tamarac, Florida, filed a Complaint with The Florida Bar against the Respondent claiming that the Respondent sent him a threatening letter which he stated intentionally misstated existing law.

The dispute between Menzano and the Respondent involved the interpretation of deed restrictions which were recorded in 1973, but which have become the subject of recent state, federal and bankruptcy court litigation.

In support of his charges, Menzano provided The Florida Bar with a State Court opinion. In responding to the Complaint, this Respondent provided The Florida Bar with federal law that he believed supported his position.

The Florida Bar responded that the applicable and enforceable interpretation of the subject deed restrictions must be decided by the Courts and not by The Florida Bar.

The litigation referred to The Florida Bar by Menzano was commenced on or about April 12, 1994 by John Lewis and Peter Martin against Westwood Homeowners Association asserting that the Declaration of Restrictions and By-laws of Westwood Homeowners Association violated federal law.

This action was filed in Federal District Court and styled John L. Lewis and Peter C. Martin v. Westwood Community Two Association, Inc., Case No. 94-6318-CIV Ungaro-Benages.

On September 26, 1995, Lewis and Martin were granted partial summary judgment as to liability and on October 25, 1995 the federal court via Order of Clarification stated that the original version of paragraph 6 of the Declaration of Restrictions is still effective.

Article 6 of the original version of paragraph 6 gives Westwood Homeowners Association power to exclude children under the age of 16 from residing in the Westwood community.

The Florida Bar and the Referee have illegally and contrary to law taken a position that the Federal Court order dated October 25,

1998 is null and void and have accused the Respondent of violating State Court orders and Florida Bar Rules and have asked The Florida Supreme Court to disbar Respondent.

SUMMARY OF ARGUMENT

The Florida Supreme Court has ruled that:

> Disciplinary actions while not fully criminal in character, are penal proceedings, and therefore the clear and convincing evidence necessary to sustain a referee's finding of guilty is more than the mere preponderance of the evidence sufficient for a civil action, although not as stringent a standard as that required in criminal cases. **The Florida Bar v. Quick, 1973, 279 So.2d 4.**
>
> Although disciplinary proceeding against attorney is not criminal trial and therefore quantum of proof necessary to disbar need not be beyond and to exclusion of reasonable doubt, quantum of proof suggested by mere preponderance of the evidence, as is case in ordinary civil proceedings, does not satisfy requirements of such proceedings. **The Florida Bar v. Rayman, 1970, 238 So.2d 594**

On page 11 Section III of the Referee's report, he states:

> The actions Klein have taken not only have saddled this Community with large monetary judgment, but the threats and tactics used included Civil and Criminal actions that caused harm to everyone who opposed Klein.

The Florida Bar at the re-hearing before the Referee on December 8, 1999 stated and admitted that Klein had nothing to do with the judgment against Westwood Community Two Association, Inc.

Additionally, the Referee stated in Section III:

> … the public at large, has been the victim of this serious misconduct by a Florida lawyer.

This issue was not addressed at the hearing and accordingly this Respondent could not respond. No proof was submitted by The Florida Bar how the public was a victim of Respondent's alleged misconduct.

Attacked to the Referee's Report is a recommendation from the Referee for an emergency temporary sanction and in paragraph 6 of the Report he states:

> 6. It is my opinion that the public interest in this case demands that the public be protected from harm; therefore disbarment is the only remedy that can be fashioned, to prevent the continuing harm to innocent parties and the community.

There was no evidence presented at the hearing before the Referee on this issue and accordingly this Respondent could not respond to the charge that he be disbarred to protect the public from his ability to cause harm to the public and prevent continuing harm to

innocent parties and the community.

Paragraph 1 of the Referee's Report states:

> 1. This Referee has this day forward to the Supreme Court of the State of Florida my Report of Referee concluding that the Respondent, Edward Klein, be disbarred from the Florida Bar after having been found guilty of sixteen out seventeen Counts of the Florida Bar's Compliant. The Florida Bar has presented a compelling case of attorney misconduct by the clear and convincing evidence presented to this Referee. Not only is the misconduct egregious, but it is on going, even to the present. (Emphasis added).

This Respondent submits that the last sentence in this paragraph is mere conjecture on the part of the Referee.

No proof or testimony of the allegations was submitted at the hearing before the Referee by The Florida Bar.

Paragraph 2 of the Referee's recommendations states:

> 2. The Florida Bar has alleged and I have found, by the clear and convincing evidence that Edward Klein (Klein) has engaged in massive conflicts of interest and misrepresentations to various tribunals of this State and to his clients and others. He has used the Judicial system in a retributive manner. Members of the public and members of the Home Owners Association have been impacted by his designs and contrivances.

> The evidence is clear and convincing in this case.

These are serious charges and allegations of the type of misconduct requiring proof by clear and convincing evidence.

This Respondent submits that The Florida Bar has failed in all of the categories as follows:

(A) Massive conflicts of interest: The Florida Bar, at the hearing, did not address this issue or offer proof of this allegation.

(B) Misrepresentations to various tribunals of this State: The Florida Bar has failed to identify the various tribunals or the alleged representations to this tribunals.

(C) Misrepresentations to his clients and others: The Florida Bar did not address this issue at the hearing or identify the others.

(D) Use of the judicial system in a retributive manner: The Respondent filed criminal charges against certain individuals as a private citizen, not as an attorney.

Paragraph 3 of the Referee's recommendations states:

> 3. It is my conclusion, that Klein truly does not appreciate the ramifications of his misconduct and that his continued representation of himself, the Home Owners Association and others, in defense of lawsuits against former Director's of the Home Owners Association and others is an on going conflict of interest. This affects not only these members, but the

> operation of the Home Owners Association and all of the home owners of own real property in this subdivision.

This Respondent submits that on the alleged on going conflict of interest this attorney complied with Rule 4-1.7 B1 and 2 and advised and gave documentation to the Referee and The Florida Bar accordingly.

Paragraph 4 of the recommendations states:

> 4. My conclusion based on the clear and convincing evidence, is that Klein's intermeddling in the Bankruptcy cases, continues to cause monetary damages to the residence of Westwood. Westwood ultimately must bear the financial burden of a 1.2 million dollar damage award entered against the Community because of Klein's actions.

On this issue The Florida Bar and the Respondent are in total agreement.

At the rehearing held on December 1, 1998 The Florida Bar admitted that this Respondent was not involved with the judgment obtained by the debtor corporation's creditors.

A transcript of the testimony has been furnished to the Referee and the Florida Supreme Court.

On page 8, line 14 is a statement from Mr. Tynan:

The Bar does not agree and the record does support, that Mr. Klein was not involved in the final hearing of damages against the Association.

It is apparent that The Florida Bar and the Referee are ignorant of Respondent's responsibilities and power in the litigation in state, federal and bankruptcy courts.

First and foremost, this Respondent never had the ability to enforce age restrictions.

The only entity with the power to enforce valid age restrictions is the Board of Directors of Westwood Community Two Association, Inc.

The Florida Bar and the Referee seem to be unaware or are ignorant of the fact that Westwood Community Two Association, Inc. has been in bankruptcy for the past 2 ½ years and the only entity in charge is the trustee in bankruptcy. There is no Board of Directors or attorney for any Board of Directors.

THE PETITION FOR EMERGENCY SUSPENSION AND DISBARMENT WAS NOT CALLED FOR UNDER THE CIRCUMSTANCES OF THIS CASE

All litigation against Westwood Community Two Association, Inc., debtor in bankruptcy court, has been concluded.

The three creditors who have filed proof of claims have been

awarded judgments in the appropriate amount of 1.2 million dollars.

No appeals have elapsed and the time to appeal has elapsed.

Accordingly, The Florida Bar's petition or emergency suspension of Respondent because he would be in a position to cause great public harm, has no merit.

The Florida Bar has admitted that this Respondent had nothing to do or was involved in the final judgment against the bankrupt corporation.

No client was put at risk and no client funds were put at risk. All 16 counts were for alleged minor offenses, all of which were not proved at the hearing before the Referee.

COUNT I

RESPONDENT'S RESPONSE TO REFEREE'S REPORT DATED NOVEMBER 4, 1998

The Respondent testified that the developer of the Association was out of business. The Bar agreed.

The Respondent admitted that he did not obtain the consent of the institutional lenders holding a first mortgage in the Westwood Subdivision.

The Board of Directors were advised by the Respondent that the failure to comply with this item could disqualify the Association as housing for older persons.

This item was debated, pro and con, and finally the Board disagreed with Respondent's advice and directed Respondent to qualify the Association as housing for older persons without the approval of the institutional lenders.

Respondent further testified that it was his belief when Congress passed the 1988 Fair Housing Act, its intent was to supersede all recorded deed restrictions in homeowners associations.

The Referee has failed to credit Respondent with the benefit of Bar Rule 4-2, 4-3.1 which states:

> A lawyer shall not bring or defend a proceeding or assert or controvert an issue and therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension modification or reversal of existing law. (Emphasis added).

This attorney was of the opinion that the Federal Housing Act superseded all recorded deed restrictions.

This attorney's opinion was correct. Congress has since

modified existing law which provided procedures to alter or modify recorded deed restrictions.

Count I calls for sanctions because Respondent has not followed federal procedure in a federal case.

This Respondent questions if The Florida Bar has jurisdiction to sanction him for

failure to follow federal procedure in a civil case.

Rule 4-3.1 states:

> A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law.
> Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).
>
> Comment
>
> The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed. However, the law is not always clear and never is static. Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change.
>
> The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not been fully

> substantiated or because the lawyer expects to develop vital evidence only by discovery. Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail.

COUNTS II AND III

THE REFEREE'S FINDINGS WERE NOT SUPPORTED OR PROVED BY TESTIMONY OR EXHIBITS AT THE HEARING

The Referee's findings were not supported or proved by testimony or exhibits at the hearing, as follows:

A. The Respondent did not list the house for sale. The Bresnick's placed the house for sale with a real estate broker.

B. The Respondent did not prepare or negotiate any contract for sale of the house.

C. The Respondent did not prepare or inset any clause in the contract.

D. The Respondent was not retained by the Bresnicks to find a buyer for the house.

E. Paula Gajewski, who testified at the hearing, stated that this Respondent had nothing to do with the preparation of the contract of sale. See TFBE 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 71.

The contract of sale of the Bresnick house was prepared by Tenance Realty, Inc. and Fay G. Bresnick.
This Respondent's name does not appear in the contract. The Respondent never entered into or negotiated or amended a contract

for the purchase and sale of the Bresnick house located at 9805 N.W. 67th Court, Tamarac, FL 33321. Gajewski apparently entered into a contract prepared by a real estate broker and appeared before the Westwood Community Two Association's screening committee for approval of the contract for the purchase of the Bresnick home. The screening committee withheld approval because of age restrictions that the Association was enforcing in 1994. This Respondent was not a member of the screening committee. He was not a board member, only the attorney for the board during the year 1994. The Bresnick estate beneficiaries who retained the Respondent to represent the estate at the sale of the house were informed by the Respondent of the age restriction and that any potential buyer would require approval from the screening committee. Gajewski complained to the Broward County Human Rights Commission and after a full and complete hearing and investigation, her case was dismissed. There was no conflict of interest. Their interests were not adverse in this matter. Respondent was the attorney for the Bresnick estate and attorney for the homeowner's association. Their interests were similar, not adverse. The Respondent could not represent the Bresnick estate at the closing unless the screening committee had approved the sale. Gajewski was

not at any time Respondent's client.

COUNT IV

Administrative Order No. II-88-A-1, paragraph 2 states:

> 2. Whenever a suit is terminated by entry of a notice of voluntary dismissal, or is dismissed by a judge for lack of prosecution or is dismissed without prejudice for any reason, and the same suit is refiled without a substantial change in issues or parties, counsel shall forthwith notify the judge to whom the original suit was assigned, the original judge shall then enter an appropriate order transferring the case back to the division of the original judge. In such instance, the original judge shall not transfer a case to the assigning judge in lieu thereof.

The suit before Judge Moriarty was never dismissed, voluntarily or otherwise. Administrative Order II-88-A-1 does not apply.

The case before Judge Moe involved different parties and different issues.

The issues in the case before Judge Moe in State court was for conspiracy, intentional interference with an advantaged business relationship and violation of plaintiffs' civil rights.

The issue in Judge Moriarty's court was the validity of the State's Fair Housing Law.

COUNT V

REFEREE'S REPORT

The Referee's Report states:

> 1. On or about October 12, 1995, a summary judgment in the Lewis and Martin State court lawsuit [Case Number 94-4248(18)] was entered against Westwood. On or about March 22, 1996, Klein filed a Motion to Stay. At the time that Klein filed the Motion to Stay, there was nothing to stay as there was nothing Lewis and Martin, the prevailing party, could execute upon as there was no final order (at that time) entered in the Lewis and Martin State court lawsuit. Klein filed a frivolous motion.

At the hearing, Respondent submitted a Cost Judgment in the amount of $2,870.48 dated November 15, 1995.

The Florida Bar did not respond. According, this Count should be dismissed. (Cost Judgment attached hereto).

COUNT VII

Plaintiff's attorney in the Lewis and Martin lawsuit served Respondent with production of documents. The Respondent produced all of the documents with the exception of the bank statements that he did not have in his file. He called the treasurer of the

Association, Ruth Fleischer, to produce the two missing bank statements. She stated that she would order them from the bank.

She ordered them from the bank, gave them to Respondent, who then gave them to plaintiff's attorney.

Mrs. Fleischer's deposition was held at The Florida Bar's office on August 5, 1999. See tab 101 of the Bar's exhibit list.

The Respondent had no intent to withhold the two bank statements. See The Florida Bar v. Cramer, 643 So.2d 1069, which stated in order to find that an attorney acted with dishonesty, misrepresentation, deceit or fraud the necessary element of intent must be proven by clear and convincing evidence.

There was no intent by Respondent to hold back production of documents. He could not produce documents that he did not have. See Exhibit R.101 Deposition of Ruth Fleischer, Treasurer, in which she stated that Respondent ordered the records from her and that she ordered them from the bank. Pages 26, 27, 28.

COUNT VIII

THE FLORIDA BAR AND THE REFEREE HAVE ILLEGALLY TAKEN A POSITION ON THE VALIDITY OF THE ORDER OF CLARIFICATION

The validity of the Order of Clarification must be decided by the courts, not by The Florida Bar.

The Menzano lawsuit for alleged violation of a Federal Order was brought in State Court. The Fair Housing Act permits a complainant to file in either State or Federal Court.

Respondent filed suit at the request of the Board of Directors.

The Order of Clarification did provide the Respondent with authority to file the Complaint in either Federal or State Courts. See 42 U.S.C. 3613, which states:

> An aggrieved person may commence a civil action in a United States District Court or State Court not later than two years after the occurrence or the termination of an alleged discrimination housing practice.

Comment under Rule 4-8.4 – A lawyer may refuse to comply with an obligation imposed by law under a good faith belief that no valid obligation exists.

The provisions of Rule 4-12(d) concerning a good faith challenge to the validity, scope, meaning or appreciation of the law apply to challengers of legal regulation of the practice of law.

The above two paragraphs should be reviewed in conjunction with the United States Supreme Court decision in Nash v. Florida

Industrial Commission, 389 U.S. 235, which holds that where upon the same set of a facts a State and Federal court decision differ, the Federal court decision prevails.

COUNT IX

It is clear that the findings of this Referee that the undersigned was in contempt for acting without authority from his client was erroneous.

On April 1, 1997, the Circuit Court of the 17th Judicial Circuit in and for Broward County, by the Honorable W. Herbert Moriarty, entered an Order of Civil Contempt against Edward Klein.

First, it should be noted that in The Florida Bar v. Garland, 20 FLW S119, 1995 Fla.S.Ct. 6013-1, the Florida Supreme Court states as follows:

> The Florida Bar 3-4.4 provides that "…nor shall the findings, judgment, or decree of any court in civil proceedings necessarily be binding in disciplinary proceedings." Disciplinary proceedings are not concerned with the issues addressed in criminal or civil proceedings. Rather, disciplinary proceedings are concerned with violations of ethical responsibilities imposed on an attorney as a member of The Florida Bar. Florida Bar v. Swickle, 589 So.2d 901 [16 FLW S727, 1991 Fla.SCt 4741], 905 (Fla. 1991).

Thus, the findings set forth in the Order of Civil Contempt

Against Edward Klein are not necessarily binding on The Florida Bar in this case. In the said Order of Civil Contempt Against Edward Klein, Judge Moriarty stated:

> …it is the opinion of this Court that Edward Klein acted without authority from his client and is therefore personally liable for the contemptuous actions.

The finding was based upon the statement of Dan Powers, a member of the Board of Directors of Westwood Community Two Association, Inc. The undersigned attorney was given no notice that Mr. Powers would be testifying at the hearing, nor was he advised what Mr. Powers would be testifying to. In fact, Mr. Powers' testimony is in direct contravention to his April 29, 1997 sworn Affidavit, a copy of which is attached hereto.

After the hearing, the undersigned attorney obtained sworn Affidavits from the four (4) other members of the Board of Directors of Westwood Community Two Association, Inc. All of these Affidavits state in pertinent part:

> The Board of Westwood Community Two, Inc. authorized and directed its attorney, Edward Klein, to commence an action against Mark and Linda Menzano, his wife, which was served and filed on or about February 21, 1997 under Case No. 97-02818.

The Affidavits also stated that the Board was authorized to issue a check to the undersigned for the filing and service of process fees in the case. See Affidavits of Daniel Powers, Bernard winter, Betty Ravitch, Winifred Ostrum, Ruth Fleischer and Edward Klein, TFK Exhibit L 76, 77, 78, 79, 80.

In the Order of Civil Contempt Against Edward Klein, the Court further stated that:

> Even if he [Edward Klein] had authority, however, he is still responsible for his actions since, as an officer of the court, he is sworn to uphold the laws of this State and abide by the lawful orders of the courts of this State. By his own admission he acknowledges that under the laws of this State, the Association cannot enforce the "16 and older" age restriction.

However, this finding ignores the provision in the Federal Fair Housing Act which allows a litigant to file suit in either Federal or State court under the Federal Fair Housing Act. The laws of the State of Florida are not what Westwood Community Two Association, Inc. sought to enforce in its action against Mark and Linda Menzano; rather, it was the provisions of the Federal Fair Housing Act and the Order of Clarification that was being attempted to be enforced. Therefore, the Court's finding that the

undersigned failed to uphold the laws of the State is incorrect as the undersigned was not challenging any law of the State of Florida, but rather was seeking, in good faith and based upon his professional judgment, to enforce the provisions of a Federal law which specifically provided that its enforcement could be sought in State court.

COUNT X

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

The Referee stated "Klein knew the age restrictions were invalid".

This Respondent submits that the Menzano complaint was based upon the Federal Order of Clarification, and so testified at the hearing.

The Referee rejected this defense stating that a plain reading of the Order of Clarification leads to a different conclusion.

The Respondent stated that the Order of Clarification is the law in this case and has not been rejected by any court of competent jurisdiction.

COUNT XI

The Referee's Report states:

1. At the time that Klein filed the Menzano law suit, he acted in the following capacities:

   a. resident and homeowner in the Westwood community;

   b. officer of, or a member of the board of directors of, the Westwood or its successor in interest;

   c. attorney and legal counsel for Westwood or its success in interest in the various pending lawsuits concerning age limitations.

COUNT XI

FINDINGS OF FACT

The Respondent was the attorney and a member of the Board of Directors of Westwood Community Two Association.

Menzano was not his client.

The Board of Directors authorized and directed Respondent to file a Summons and Complaint against Menzano.

There is no conflict of interest. There were no pending lawsuits as alleged by the Referee.

COUNT XII

THE RESPONDENT DID NOT SUBMIT A FALSE AFFIDAVIT TO THE FLORIDA BAR

Mr. Powers testified that he approved of the Menzano complaint because at a general homeowners meeting the homeowners approved the service of a Complaint against Menzano.

Mr. Powers dictated the language in this affidavit.

The Bar's complaint alleged that Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresenta-tion.

See Powers Affidavit TFBE page 76 and Affidavits from four (4) Board members and an Affidavit from this Respondent that the Board of Directors authorized and directed this attorney to prepare and file a complaint against Menzano.

In order to find that an attorney acted with dishonesty, misrepresentation, deceit, or fraud, the Bar must show the necessary element of intent. Florida Bar v. Neu, 597 So.2d 266, 268 (Fla. 1992).

The Bar has the burden of proof. The Bar has failed to prove its case.

COUNT XIII

The Referee's Report states:

Count XIII

1. On or about February 26, 1997, an evidentiary hearing was heard about Klein's contempt violation. It was determined that Klein failed to inform Westwood about the lawsuit against the Menzano's and Klein was found to be in contempt. In or about April 1997, Klein filed an appeal to the contempt order. This appeal was styled Edward Klein, Esq. V. Westwood Community Two Association, Inc., John L. Lewis and Peter C. Martin and was designated as case number 97-1411. In his appeal, Klein stated that the action was brought against the Menzano's at the request of Westwood. In truth and fact, Klein had not informed his client, or the Board of Directors of Westwood, prior to the filing of the Menzano lawsuit, that he was going to file such lawsuit. Therefore, it was impossible for his client ot have authorized an action (i.e. the filing of a lawsuit) when they had no knowledge of the contemplated action prior to the action being taken.

The Referee is mistaken. The Respondent was authorized by the entire Board of Directors to file the lawsuit.

The entire Board including Powers approved Respon-dent's actions.

COUNT XIV

The Florida Bar and the Referee are both confused about Respondent's position concerning the Federal Court Order of Clarification and the Federal Fair Housing Act.

This Respondent's position on the Order of Clarification is that the Order of Clarification gives the homeowners association the right to exclude children under the age of 16 from residing in the community. This is the law of the case.

This Respondents position on the Federal Fair Housing Act has been that the act superseded all deed restrictions.

The Florida Bar should not take any position on the subject of deed restrictions. The subject deed restrictions must be decided by the Courts and not by The Florida Bar.

Respondent's legal opinion and alternative arguments as set forth in his appeal is of no consequence.

The Federal Court of Appeals affirmed Judge Ungaro's order.

There was no false misrepresentation or false statement of material fact made to any tribunal and therefore there was no violation of Rules 3-4.2, 4-3.3(a), 4-8.4(a) and (d).

COUNT XV

The count is for an alleged violation of a Federal rule of procedure in a United States District Court case on a motion for attorney fees and costs.

The Federal Court Order in this case stated that the District Court is free to entertain a motion for attorneys' fees even while

a case is on appeal.

The Florida Bar is without jurisdiction to complain about Federal procedure in a Federal case.

COUNT XVI

Respondent submits that The Florida Bar and the Referee are confused and mistaken of the facts and Respondent's alleged participation in Count XVI.

First and foremost, the Respondent did not participate in any way in the bankruptcy petition filed on or about November 22, 1995.

The Board of Directors of the homeowners association retained an attorney to file the petition, Case No. SF 24625 EJC-RBR.

On or about March 18, 1996, the Board of Directors of the homeowners association retained another attorney to petition the bankruptcy court to dismiss the bankruptcy petition. The motion was granted with the proviso that the homeowners association could not file another petition for six (6) months.

Klein did not participate in any way with bankruptcy #1.

On April 16, 1997 the Respondent filed a Petition in Bankruptcy at the request of the Board of Directors of the homeowners association. Petition No. 97-1095-BKC PGH.

The Florida Bar and the Referee claim that both petitions were filed to defeat creditors claims. This is nonsense. A petition in bankruptcy is filed because the petitioner is insolvent.

The record presented to the Referee proves that when both petitions were filed the petitioner was insolvent. TFBE 34-42, 43, 44, 45, 46, 48, 50.

In paragraph 3 in Count XVI, the Referee states that "Klein continues to enforce age limitations set forth above."

Additionally, in paragraph 3 is the statement by the Referee:

> On or about October 14, 1997, the bankruptcy trustee in case number 97-1095-BKC-PGH filed a complaint to avoid fraudulent transfer and for a determination that Klein is the alter ego of the debtor and for turnover of property to the bankruptcy estate.

This is nonsense. How could the Respondent be the alter ego of the debtor; the debtor is Westwood Community Two Association, Inc.

Fact: The trustee filed an adversary proceeding against Westwood Community Two, Inc. claiming it was the alter ego of the debtor corporation. The Respondent was not on the Board of Directors or the attorney for the corporation.

This Respondent moved for intervention on behalf of the debtor corporation. The bankruptcy court granted intervention.

The trustee, the attorney for the new corporation, and Respondent agreed that the bankruptcy judge sign an order stating that the new corporation was the alter ego of the debtor corporation.

There was no transfer of assets because there were no assets. The bankruptcy trustee whose job is to collect the assets of the debtor corporation has not, to date, declared that assets were fraudulently transferred.

The Florida Bar offered no proof that there was an assignment of assets from one corporation to another corporation in the case in United State Bankruptcy Court.

The Respondent presented proof to this court that the alleged Final Judgment in paragraph 136 and 137 of the complaint was voided by the bankruptcy judge and that a Final Judgment was signed by Judge Hyman stating that the Trustee's attorney fraudulently submitted the judgment that the court voided.

COUNT XVII

The Referee and The Florida Bar have accused this Respondent of severe ethical and legal violations, without offering or

submitting any proof to back up their allegations of misconduct.

Example: Klein continues a campaign, which continues to today, to improperly attempt to enforce invalid age limitations in his community.

Example: Klein fraudulently bankrupt the Association.

The Florida Bar has failed to meet its burden of proof.

The Referee is unaware that the Respondent has not been a member of a Board of Directors or the attorney for a Board of Directors for the past 2 ½ years. He is a homeowner and has no influence or say in the affairs of the Association or its membership other than a single vote given to him by the Declaration of Covenants and Restrictions as a homeowner.

The Referee's statement that Klein fraudulently bankrupted the Association has no validity. In fact, the Referee's statement that Klein continues to enforce invalid age restrictions is erroneous. No proof of the validity of these statements were submitted to the Referee.

Klein has no power to enforce any of the Associations' Rules or Regulations.

The Florida Bar offered no proof that the Respondent fraudulently bankrupted the association or that the homeowners

must ultimately pay an award of attorneys' fees and costs.

The bankruptcy petition filed by Respondent has been upheld as valid by the bankruptcy judge.

This case is still being litigated in Bankruptcy Court.

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

Edward Klein
9803 N.W. 67th Court
Tamarac, FL 33321
(954) 726-3828
Florida Bar No. 0650897

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. Klaits, 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 this ____ day of February, 2000.

Edward Klein
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