

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

The Florida Bar,
Complainant,

v.

Alan Ira Karten,
Respondent.

CASE NO. SC00-256
THE FLORIDA BAR
FILE NO. 1998-71,455(11B)

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the Rules of Discipline, hearings were held on the following dates:

Violation Hearing dates: December 15, 2000
 December 18, 2000
 January 5, 2001

Disciplinary Hearing dates: January 11, 2001
 January 12, 2001
 January 19, 2001

The following attorneys appeared as counsel for the parties:

For the Florida Bar, Randi Klayman Lazarus, Esquire

For the Respondent, Louis M. Jepeway, Jr. and David Tucker (Disciplinary hearing only)

II. Findings of Fact as to Misconduct of Which the Respondent is charged:

After considering all the pleadings and evidence before me, pertinent portions of which are commented upon below, I find as to the single count of “[a] lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation:”

1. On June 27, 1996, the United States District Court, Southern District of Florida, appointed Mr. Alan I. Karten, pursuant to the Criminal Justice Act (CJA), to represent Mr. Nelson Loynaz, Jr. in the criminal case of United States v. Nelson Loynaz, Jr., case number 96-439-CR-Davis. On September

27, 1996, Mr. Karten filed a motion for return of property, to wit: five vehicles belonging to Mr. Nelson Loynaz and/or Mrs. Mary Loynaz that had been seized after Mr. Loynaz' arrest by federal law enforcement officers. Subsequently, the Court denied Mr. Loynaz' motion because the vehicles were subject to criminal forfeiture when the United States filed a Bill of Particulars on October 11, 1996, opposing Loynaz' motion for return of his vehicles.

2. On June 17, 1997, Mr. Loynaz entered a plea of guilty to a Superseding Information charging him with two counts of using a communication facility (a telephone) to commit, cause and facilitate a conspiracy to possess with intent to distribute cocaine. As a part of his plea agreement, Mr. Loynaz agreed to forfeit one 1994 Dodge Viper and thirty thousand dollars (\$30,000), via a cashier's check from Mr. Alan Karten, Esquire, attorney for Mr. Loynaz, Jr., payable to the U.S. Marshal's Service. In exchange, five remaining seized vehicles - one Mercedes Benz belonging to Mrs. Loynaz and two Chevrolet Corvettes and two Ford Mustangs belonging to Mr. Loynaz - would be returned to Mr. Loynaz. (Fla. Bar Exhibit No. 6 and Respondent Exhibit No. 7).

3. On or about November 12, 1997, Mr. Karten mailed a Client Retainer Agreement to Mr. Loynaz who at the time was incarcerated at the Federal Correctional Institution in Forrest City, Arkansas, regarding his representation of Loynaz for the return of the vehicles enumerated in the September 23, 1997, Stipulation and Settlement Agreement. (Fla. Bar Exhibit Nos. 6 and 7). Mr. Loynaz refused to sign the Retainer because he considered Mr. Karten as his court appointed attorney, and he repeatedly and unsuccessfully tried to telephone Mr. Karten to tell him that he would not sign the Retainer.

4. On or about December 5, 1997, Mr. Karten mailed to Mr. Loynaz a Power of Attorney relating to the two Chevrolet Corvettes and two Ford Mustangs that he requested Mr. Loynaz to sign for the sale of said vehicles. Similarly, Mr. Loynaz refused to sign the Power of Attorney and, once again, he

made repeated unsuccessful attempts, along with his now ex-wife, to contact Mr. Karten about this matter.

5. The evidence belies the existence of a Retainer Agreement and/or Authorization Agreement for Mr. Karten to represent Mr. Loynaz, outside of his court appointment under the CJA, in the criminal forfeiture matter.

6. Mr. Karten, after borrowing thirty thousand dollars from his wife, paid the U.S. Marshals the aforementioned amount via a cashier's check, and he took custody of the vehicles, in spite of Mr. and Mrs. Loynaz' repeated attempts to contact and submit to him \$30,000 so that the vehicles could be legally returned to Mr. Loynaz in accordance with the September 23, 1997 Stipulation and Settlement Agreement. Subsequently, Mr. Karten returned, without charge, the Mercedes Benz to Mrs. Loynaz (Respondent's Exhibit No. 6).

7. Mr. Karten negotiated, without Mr. Loynaz' authorization, the sale of the two Chevrolet Corvettes and two Ford Mustangs to Mr. Robert Woltin, whom he met in 1997, after Mr. Woltin opened the Louie Louie Bar and Grill Restaurant which is incorporated under the name of 201 East Atlantic Investment Corporation. Consequently, Mr. Karten became a 25% shareholder along with Mr. Carl S. Karim, respectively, while Mr. Woltin served as president with a 50% shareholder interest in 201 East Atlantic Investments Corporation. Further, the agreement between Mr. Karten and Mr. Woltin included: (1) Mr. Karten paying \$30,000 to the United States Government and him picking up the four vehicles; (2) Mr. Woltin, upon receipt of the vehicles, paying \$30,000 to Mr. Karten; (3) Mr. Woltin selling the vehicles and paying Mr. Karten \$60,000; (4) Mr. Woltin keeping the proceeds from the sale of the vehicles that are in excess of \$60,000; and (5) that the 1966 green Chevrolet Corvette will be sold to Mr. Thomas Duncan for \$25,000 - payable with a \$1,000 deposit to be followed by a balance payment of \$24,000 in three to four days via a cashier's check payable to Mr. Alan Karten.

8. Pursuant to their agreement, Mr. Woltin, after receiving the four vehicles, paid Mr. Karten \$30,000. On March 11, 1998, Mr. Woltin sold the 1966 green Chevrolet Corvette to Mr. Thomas Duncan, who tendered a cashier's check made payable to Mr. Alan Karten who later endorsed it over to Mr. Woltin. Subsequently, the check was deposited as capital investment toward Mr. Karten's 25% shareholder interest in the Louie Louie 2 Restaurant. See Fla. Bar Exhibit No. 9 (Mr. Duncan's \$1,000 deposit made payable to Mr. Woltin); Fla. Bar Exhibit No. 10 (Purchasing Agreement for the Green Corvette); and Fla. Bar Exhibit No. 11 (Mr. Duncan's \$24,000 cashier's check made payable to Mr. Karten).

9. Mr. Karten presented testimony and other evidence in an attempt to show that Mr. Loynaz was not the lawful owner of the aforementioned vehicles, or in the alternative, even if he was the lawful owner, counsel was lawfully hired by Mr. Loynaz to handle this matter as an administrative forfeiture not covered by the Criminal Justice Act. The former assertion is belied by credible testimony by Mr. Loynaz that he purposely masked his ownership in the vehicles to avoid their seizure and forfeiture in the event of his arrest on drug charges. Second, the action by the United States on October 11, 1996, opposing defendant's motion for return of property placed this matter a part of the criminal case and not an administrative forfeiture. (Fla. Bar Composite Exhibit No. 13). Further, Mr. Karten, a twenty-five year practicing criminal attorney, failed to secure or produce from Mr. Loynaz any existing written agreement that either authorized his representation outside of the Criminal Justice Act, or that permitted counsel to use the four vehicles as collateral toward attorney fees for representation during the forfeiture proceeding.

10. Mr. Karten's representation of Nelson Loynaz, from the date of his court appointment, as counsel under the Criminal Justice Act, was governed by Title 18, U.S.C. Section 3006A (f) which provides, in part, "except as so authorized or directed, no such person or organization {i.e. one appointed

under the Act} may request or accept any payment or promise of payment for representing a defendant.”

The absence of both a written Client Retainer Agreement and Power of Attorney, would constitute evidence that Mr. Karten violated Title 18, U.S.C. Section 3006A (f) when, after entering into the September 23, 1997 Stipulation and Settlement Agreement, he sold the vehicles in question after receiving compensation by the United States for his court appointed representation of Mr. Nelson Loynaz (Respondent Exhibit No. 8). Even assuming arguendo that he did not violate Section 3006A (f), the evidence demonstrates that Mr. Karten committed and/or perpetrated fraud upon Mr. Loynaz by selling the vehicles without proper authorization or consent from Mr. Loynaz. 11. Mr. Karten failed

to properly compensate Mr. Loynaz for his financial interest and/or lost in the vehicles, less \$30,000, the amount Loynaz was originally obligated to pay to satisfy the Stipulated Settlement Agreement. Moreover, Mr. Karten’s use of a \$30,000 loan from his wife as payment to satisfy the Stipulation and Settlement Agreement, coupled with the financial returns on his business arrangement with Mr. Woltin, further illustrates the extent of his irregular and deceitful conduct to exclude and take advantage of Mr. Loynaz during his confinement in a federal penitentiary outside the State of Florida. Thus, Mr. Karten has been unjustly enriched by his sale of the vehicles belonging to Mr. Loynaz and his receipt of attorney fees paid by the United States for his services as Mr. Loynaz’ court appointed attorney. (See Respondent Exhibit No. 8 Composite).

12. With regard to Mr. Loynaz’ credibility, no discernible motive on his part to testify untruthfully has been established from the evidence, irrespective of his several felony convictions. On the contrary, Mr. Loynaz’ testimony has been corroborated by the other evidence introduced at the hearing which conclusively and cumulatively shows that Mr. Karten violated R4-8.4 (C) (A).

III. Recommendation as to Whether or Not the Respondent Should Be Found Guilty:

As to the single count of the complaint, I recommend that the respondent be found guilty and specifically that he be found guilty of violating R4-8.4 (C) (A), to wit: “A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.”

IV. Recommendation as to Disciplinary Measures to be Applied:

I recommend that the respondent be disbarred from the practice of law in Florida.

On January 12, 2001 and January 19, 2001, respectively, I conducted a mitigation and aggravation hearing for recommendation as to the disciplinary measure to be applied in this case. During both the violation and disciplinary phase, Mr. Karten has not presented any note of contrition or acknowledgment that he violated R4-8.4 (C) (A). Although Mr. Karten presented several friends or colleagues, who are highly regarded and experienced trial lawyers in the legal community, all who expressed praise and confidence in his reputation for truthfulness and veracity, I find that any existing mitigating factor has been overwhelmingly outweighed by the following aggravating factors:

- a. Mr. Karten’s prior disciplinary offense;
(Admonishment for minor misconduct)
- b. Mr. Karten’s dishonest or selfish motive;
- c. Mr. Karten’s refusal to acknowledge the wrongful nature of his conduct;
- d. The vulnerability of Nelson Loynaz who while incarcerated in a federal penitentiary was taken advantage of by Mr. Karten;
- e. Mr. Karten’s substantial experience in the practice of law; and
- f. Mr. Karten’s indifference to making restitution to Mr. Loynaz.

V. Personal History and Past Disciplinary Record:

After finding of guilt and prior to recommending discipline to be recommended pursuant to Rule 3-

7.6(k)(1)(D), I considered the following personal history and prior disciplinary record of the respondent,
to wit:

Age: 50

Date admitted to Bar: 1975

Prior disciplinary convictions and disciplinary measures imposed therein:

minor misconduct, violation of R4-8.4(d) (A lawyer shall not engage in conduct that is prejudicial to the administration of justice); Admonishment, June 8, 1998 (Fla. Bar Exhibit No. 14).

VI. Statement of Costs and Manner in Which Cost Should be Taxed:

I find the following costs were reasonably incurred by The Florida Bar.

Investigator's and staff counsel costs as reported by bar counsel	\$2,636.39
Administrative costs Rule 3-7.6(k)(1)(E)	\$ 750.00
Bar counsel copy costs	\$1,508.80
Court reporter costs	\$1,083.60
TOTAL ITEMIZED COSTS	\$5,978.79

It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses together with the foregoing itemized costs be charged to the respondent.

Dated this _____ day of January, 2001.

Referee, Jerald Bagley

Certificate of Service

I hereby certify that a copy of the above report of referee has been served on Randi Klayman Lazarus, Bar Counsel, at The Florida Bar, Rivergate Plaza, Suite M-100, 444 Brickell Avenue, Miami, Florida, 33131, Alan Ira Karten at 20803 Biscayne Boulevard, Suite 200, Aventura, Florida, 33180, Louis M. Jepeway, Jr., Esq., at Jepeway and Jepeway, P.A., 19 West Flagler Street, Suite 407, Miami, Florida, 33130, David K. Tucker, Esq., at Tucker and Kotler, P.A., Douglas Centre, Suite 1108, 2600 Douglas Road, Coral Gables, Florida, 33134 and Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300 this _____ day of January, 2001.

Referee, Jerald Bagley