

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Petitioner,

vs.

ROBERT E. HUGHES, SR.,

Respondent.

Case No. SC01-617

**TFB Nos. 992083(06A) &
992128(06A)**

JUDGMENT OF GUILTY AND RECOMMENDED SENTENCE

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as referee to conduct proceedings for indirect criminal contempt herein according to Rule 10-7.2(a)(1), Rules Regulating The Florida Bar, the following proceedings occurred:

1. The Florida Bar filed a Petition Against the Unlicensed Practice of Law and Prayer for Contempt Citation on March 19, 2001.
2. Respondent, acting pro se, filed his response on March 19, 2001.
3. The Supreme Court of Florida issued an Order to Show Cause for Indirect Criminal Contempt on April 12, 2001 and commanded Respondent to appear before the Honorable Owen S. Allbritton, Referee on June 15, 2001 to show cause why he should not be held in indirect criminal contempt of this Court and punished accordingly.
4. On June 13, 2001, Petitioner, The Florida Bar, filed a Motion for Judicial Notice.
5. On June 13, 2001, Anna S. Lykoudis, Esquire and Dorothy M. Pessillo, Esquire filed a Notice of Appearance on behalf of Respondent and a Motion to Continue.

6. The undersigned denied Respondent's Motion to Continue on June 15, 2001.

7. On June 15, 2001, Petitioner's Motion for Judicial Notice was granted. The undersigned took judicial notice of the Order of this Court in the matter of The Florida Bar v. Hughes, 697 So. 2d 501 (Fla. 1997), Supreme Court No. 86,571. The undersigned also took judicial notice of the Report of Referee, the Petition Against the Unlicensed Practice of Law, Respondent's initial brief and Petitioner's answer brief in The Florida Bar v. Hughes.

8. On June 15, 2001, this matter was tried before the undersigned as referee. Petitioner was represented by Loretta Comiskey O'Keeffe, Esquire and Respondent was represented by Anna S. Lykoudis, Esquire and Dorothy M. Pessillo, Esquire.

9. At trial, the following witnesses testified on behalf of Petitioner: David Browder, Esquire, Benita Pagac, Kimberly Ann Behr, Larry Bunting, and Keith Barbour. Sixteen (16) exhibits were introduced by Petitioner and received into evidence. Respondent testified on his own behalf.

All of the aforementioned pleadings and attachments thereto, exhibits received in evidence, the transcript of these proceedings and this report constitute the record in this case and are forwarded to the Supreme Court of Florida.

II. JUDGMENT OF GUILTY

Based on the evidence and pleadings that were presented before me, I find beyond a reasonable doubt that Respondent is guilty of engaging in the unlicensed practice of law in the State of Florida in violation of the injunction issued by the Supreme Court of Florida. The evidence presented in this matter proves beyond a reasonable doubt that despite the injunction from the Supreme Court of Florida,

Respondent has continued to: 1) counsel, advise and prepare documents for individuals in the creation and transfer of land trusts; 2) hold himself out as an expert in land trust agreements; 3) allow individuals to rely on him to properly prepare legal documents that affect individuals important legal rights; and 4) use the designation of trustee as a means to practice law in Florida including buying, selling, managing, and conveying real property and representing individuals in legal matters when he is not licensed or otherwise authorized to do so. Therefore, I hereby enter a judgment of guilty.

III. RECITAL OF FACTS

Based on the pleadings, testimony and exhibits admitted into evidence, the following facts constitute the contempt for which Respondent is found guilty:

As To General Allegations:

Respondent, at all times material herein, was not and is not a member of The Florida Bar, and was not therefore licensed to engage in the practice of law in the State of Florida. The Supreme Court of Florida in The Florida Bar v. Hughes, 697 So. 2d 501 (Fla. 1997) issued a permanent injunction on July 17, 1997, restraining Respondent from counseling, advising and preparing documents for individuals in the creation and transfer of land trusts, or from otherwise engaging in the practice of law in Florida until he is licensed to do so.

As To Count I:

No testimony was presented as to this count, therefore, no recital is being made.

As To Count II:

The following facts were established through testimony:

1. Testimony of David Browder, Esquire:

Mr. Browder represented the estate of Angel Johns. Prior to his death, Mr. Johns sold property to Larry Bunting. Mr. Johns took back a mortgage note from Mr. Bunting. After Mr. Johns' death, Mr. Bunting made regular mortgage payments to Mr. Browder until a fire destroyed the rental units on the property. A title search of the property by Mr. Browder revealed that Mr. Bunting had transferred the property by quit claim deed to Respondent as trustee under a numbered land trust. (Exh. 3) Respondent then transferred a portion of the property by quit claim deed from the land trust to another land trust and listed himself again as trustee. (Exh. 4)

Subsequently, Mr. Browder filed a foreclosure action on the mortgage note. Mr. Browder served Respondent with the foreclosure action as trustee of the land trusts. Mr. Browder also served Mr. Bunting because he signed the mortgage note. Mr. Bunting failed to file an answer and a judgment of default was entered against him. Respondent filed an answer, affirmative defenses and counterclaim to the foreclosure action and a response to a notice to produce. (Composite Exh. 5) Respondent indicated in his pleadings to that action that Mr. Bunting had been forced to employ Respondent to represent the interests of the trust in the litigation. (Composite Exh. 5) In his pleadings in that action, Respondent alleges cancellation of the note, concealment, fraud, no note from which to foreclose, lack of fire insurance, failure to disclose and demand for a trial by jury. (Composite Exh. 5)

Mr. Browder believed that Respondent's actions were the practice of law because the defenses and counterclaims asserted by Respondent would have destroyed the cause of action as to Mr. Bunting and were dependent on the facts that were pled concerning Mr. Bunting. The allegations in the pleadings, according to Mr. Browder, did not pertain to Respondent's role as trustee of the land trust.

(R. 53) Respondent, acting as the trustee for the land trust, was filing pleadings on behalf of the trust beneficiaries and a trustee cannot do such unless the trustee is licensed to practice law and Respondent is not. (R. 37) Mr. Browder also received a business card and correspondence from Respondent that listed Respondent's business as the Trust Law Center (Exh. 1 & 2).

2. Testimony of Benita Pagac:

Ms. Pagac is a licensed real estate salesperson. In November 1997, she represented Scott and Kim Behr in the sale of their home in Pinellas Park, Florida. Ms. Pagac received a purchase agreement indicating that Respondent would purchase the Behr's property and transfer it into a land trust. In her discussion with Respondent, Respondent held himself out to her as an expert in land trusts and explained to her how the land trust agreement would operate in their situation. (R. 79) Ms. Pagac relied on Respondent's representations and but for Respondent's explanations and representations regarding land trusts, Ms. Pagac would not have recommended that the Behr's enter into a land trust agreement. (R. 80, 83, 89) Respondent attended the real estate closing wherein Mr. and Mrs. Behr entered into a land trust agreement with Respondent and then assigned their interest in the land trust to the Housing Coalition Corporation. (Exh. 7,8 & 9) (R. 83-89)

3. Testimony of Kimberly Ann Behr:

Respondent stated to Ms. Behr that he was acting as a trustee to purchase her property at 9449 Park Lake Drive in Pinellas Park, that he would take over making the payments on their home and that in two years everything would be out of their name. (R. 95, 96) Respondent told Ms. Behr at their closing that he could represent them as an attorney if anything ever happened. (R. 99) As a result of the land trust agreement with Respondent, Mrs. Behr's credit rating has dropped drastically and she was denied a second mortgage by the bank because the

payments on her Pinellas Park property had not been made. (R. 97, 98)

4. Testimony of Larry E. Bunting:

Mr. Bunting purchased property located at 163 3rd Street North West, Largo, Florida from Angel Johns. He would personally bring the mortgage payments to Mr. Browder. Respondent had no ownership interest in the property but Respondent assisted Mr. Bunting in finding tenants and renting the apartments as a trustee. (R. 108-110) Mr. Bunting did not answer the foreclosure complaint but he knew that Respondent wrote a couple of letters in response to the foreclosure. (R. 108)

5. Testimony of Keith Barbour:

Mr. Barbour first met Respondent in July 1997 when Mr. Barbour was operating First Interfinancial Mortgage Company. At their first meeting, Respondent held himself out to Mr. Barbour as an expert in land trusts. (R. 115) Respondent explained land trusts to him and how they could be used. (R. 114) At their second meeting, Respondent convinced Mr. Barbour that if he used a land trust when purchasing investment property, he would never have any trouble with the tenants. Respondent stated that he would take care of everything and if there was any litigation or any problems, Respondent would represent him. (R. 114) Respondent told Mr. Barbour that there were significant tax benefits to using a land trust. (R. 115-117)

Relying on Respondent's advice, Mr. Barbour agreed to go into business with Respondent. From September 1997 to March 1998, Respondent purchased 21 properties for Mr. Barbour using land trust agreements. (Composite Exh. 10) (R. 119, 127-131) Respondent would find the properties for him, attend the closings on his behalf, prepare the land trust agreements, find the tenants for the properties, collect the rents and make the mortgage payments. (R. 118-120, 122-123) Mr.

Barbour would pay Respondent a \$3,500.00 commission per property, a yearly \$250.00 trustee fee per property and a \$250.00 attorney fee per property. (R. 118, 142) A corporation named the Housing Coalition Corporation was set up in 1998 for Mr. Barbour's benefit and to protect his investments. (R. 149, 151, 152) When their business relationship deteriorated, Mr. Barbour filed a lawsuit against Respondent in 1999 to force Respondent to transfer the beneficial interest in the properties back to him. (R. 127, 128) Respondent corresponded with Mr. Barbour on Trust Law Center letterhead. (Exh. 15) (R. 153-157)

6. Testimony of Robert E. Hughes, Sr., Respondent:

Respondent testified in his own defense. Respondent is not an attorney. Respondent manages property wherein he either has an interest in the property or he is the trustee under a land trust agreement. (R. 202) Respondent operates the Trust Law Center as a school to teach individuals about land trusts and how they can work for them. (R. 209) Respondent explained land trusts to Mr. Bunting and Mr. Barbour. (R. 218, 222, 224) Respondent considers himself to be an expert in the Illinois type land trust and has used the title Trust Law Center on his letterhead. (R. 208, 241-245) Respondent has drafted land trust forms and titled the forms approved forms because they are his forms and he has approved them. (R. 206-207).

Respondent understands that on July 1, 1997, he was enjoined by the Supreme Court of Florida from counseling, advising, and preparing documents for individuals in the creation and transfer of land trusts. (R. 217-218, 229, 225-226) Despite the injunction, Respondent believes that Florida Statutes give him the right as trustee of a land trust to act on behalf the beneficiary. (R. 203-206, 216) Respondent buys and sells real estate either as a beneficial owner or as the trustee. (R. 213, 214) Respondent will typically buy a property when there is a hardship

involved with the property. (R. 211) Respondent also prosecutes and defends actions against the property in court as the trustee. (R. 214-216, 222, 233, 236) Respondent has defended properties for wrongful foreclosure or predatory mortgage as the trustee and he has been successful. (R. 215)

Although Respondent did not have any beneficial interest in Mr. Bunting's property, Respondent prepared and signed pleadings in defense of the foreclosure action on behalf of Mr. Bunting as the trustee of the land trust. (R.222, 248-249)

Respondent entered into a business arrangement with Mr. Barbour and that business arrangement continued after the date of the Supreme Court Injunction. (R. 225) Respondent had numerous contacts with Mr. Barbour and he even met with Mr. Barbour's accountant to discuss tax regulations. (225) Respondent purchased and managed properties for Mr. Barbour as trustee. (R.227) In his arrangement with Mr. Barbour, Respondent also conveyed property or conveyed an interest in property. Respondent and Mr. Barbour had a disagreement as to Respondent's business practices and Mr. Barbour filed suit against Respondent to regain trusteeship of his property. (R. 217, 228, 231)

Respondent attended the closing on Mrs. Behr's property and he transferred the Behr property into a land trust. (R. 211) There was no attorney present for the closing on the Behr property. (Id.)

Respondent prepared the First Sinks' land trust agreement dated August 26, 1997, for the property located at 78 New Jersey Drive, Dunedin. The closing on the sale of that property occurred in September 1997. (Exh. 12) (R.250).

III. RECOMMENDED SENTENCE

Based upon the foregoing findings, it is the recommendation of the undersigned Referee that Respondent be sentenced for indirect criminal contempt of

the Order of the Supreme Court of Florida as follows:

- A. That Respondent Robert E. Hughes, Sr. be sentenced to five months in the Pinellas County Jail;
- B. That Respondent pay a fine of \$500.00;
- C. That the costs of these proceeding be taxed against Respondent in the amount of \$1,923.62 (The Florida Bar's affidavit of costs is attached hereto);
- D. That Respondent shall not engage in the practice of law and that the injunction enjoining Respondent from engaging in the unlicensed practice of law in Florida shall continue in its present form.

IV. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

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

1. Witness fees	\$	20.00
2. Court copies		75.00
3. Investigator's costs		78.87
4. Court reporter costs		<u>1,749.75</u>
TOTAL		\$1,923.62

It is recommended that such costs be charged to Respondent and that interest at the statutory rate shall accrue and be payable beginning 30 days after the judgment in this case becomes final.

Dated this _____ day of October, 2001.

The Honorable Owen S. Allbritton
Senior Judge

Copies to:

Loretta C. O’Keeffe, Esquire
Branch UPL Counsel
The Florida Bar
Suite C-49, Tampa Airport Marriott Hotel
Tampa, FL 33607

Dorothy Pessillo, Esquire
Anna S. Lykoudis, Esquire
Counsels for Respondent
215 So. Westland Ave.
Tampa, FL 33606

Lori Holcomb, Esquire, UPL Director
The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300