IN THE SUPREME COURT OF FLORIDA

CASE NO: SC01-73

Lower Tribunal No. 19991121(15B)

THE FLORIDA BAR,

Petitioner,

v.

ALBERT A. RAPOPORT,

Respondent

_____/

RESPONDENT'S REPLY BRIEF

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OTHER AUTHORITY

STATEMENT OF FACTS AND THE CASE

The Florida Bar continues to fail to provide a full statement of facts and distorts the issues.

They fail to state that Respondent is a licensed attorney in good standing by the District of Columbia Bar and admitted to practice by the U.S. Supreme Court.

They omit that he is a certified mediator by the Florida Supreme Court and practices mediation. It is ingenuous to say he is "operating his law practice from his Florida residence". If anything he receives mail and calls at his residence.

The advertising clearly discloses he is not a member of the Florida Bar and that the "practice" is limited to Federal Securities Arbitration.

The Bar's statement also fails to disclose that the referee did not at any time conduct any hearing on any matter and entered its order granting Summary Judgment on an ex-parte basis.

SUMMARY OF ARGUMENT

An attorney licensed and in good standing in another state or territory may appear in Federal Securities Arbitration for any party in a proceeding in Florida as an authorized practice. Such action, presently, is an authorized activity. Such does not permit a general practice of law in Florida and is limited to matters of interstate commerce under the Federal Arbitration Act by an attorney licensed in another jurisdiction.

The Supreme Court has declined to adopt a rule regulating non-Florida attorneys from representing parties in interstate securities matters under Federal Arbitration Act, and the Florida Bar attempts to circumvent the Supreme Court's rule making power, particularly, in light of questions of preemption and such is unauthorized and unprofessional.

The denial of due process and professionalism is to be repudiated in any proceeding including an alleged unauthorized practice of law. The proceedings should be dismissed, the "Order" by the referee and report be vacated and the respondent granted his costs and attorney's fees.

POINT I

IT IS NOT THE UNLICENCED PRACTICE OF LAW FOR ANY ATTORNEY IN THE DISTRICT OF COLUMBIA TO ACT FOR PARTIES IN A FEDERAL SECURITIES ARBITRATION MATTER WITHIN THE STATE OF FLORIDA

POINT II

THE FEDERAL ARBITRATION ACT PREEMPTS STATE LAW AND PERMITS REPRESENTATIONS BY ATTORNEYS NOT LICENSED IN FLORIDA

The Board cites Florida Bar re Advisory Opinion, 696 So.2d 1178 (Fla. 1997). On page 1180, footnote 1), states:

> "The proposed Opinion specifically does not address...(2) the propriety of an investor's representation in securities arbitration by an attorney who is licensed to practice in another jurisdiction but not in Florida" (emphasis added).

Nor is the statement that he is engaged in each activity that the Court stated were the practice of law as they are described in the Opinion accurate. In fact, he has not engaged in the third tier, i.e. confirmation or vacation court proceedings of arbitration award, although if required, he could qualify and do so in a limited number of times under the current Judicial Administrative Rules. However, on isolated cases he may have associated a Florida licensed attorney for such

proceedings.

Further, on page 7, “is not a licensed attorney in Florida”. This is factually incorrect. A correct statement would be “he is a licensed attorney but not licensed by the Florida Supreme Court and is living in Florida”.

This proceeding relates to a matter of very limited extent and is consistent with Federal objectives in which certain aspects of security disputes are exclusively within Federal jurisdiction while some aspects are concurrent between state and federal courts.

There is no showing that any actions of Rapoport have injured any member of the public, nor is there any question of his ability or claim of ethical violations as to his clients. It is thus consistent with Sperry v. State of Florida ex rel, Florida Bar, 373 U.S. 379,83 S.Ct. 1322 (1963) for Rapoport to engage in Federal Securities Arbitration. Such is not a general practice of law and serves the public, federal objectives and Florida objectives of seeing that the public has qualified representation.

Further, while it would be wrong to do so, it is clear that there is no Florida statute or rule of court that prohibits Rapoport’s conduct in representing either side in Federal Securities Arbitration.

No charge or finding in this case is directed to advertising, nor is any false or

misleading advertisement asserted.

On page 9 of the Bar's Brief, the Bar says (in re: Sperry):

"Florida has a substantial interest in regulating the practice of law..." However, that interest should be first and foremost the interest of the public in their disputes and the quality of that representation in the disputes.

We are now sophisticated enough to understand that the Court has authorized self dissolution of marriage and self help forms in a variety of other circumstances; i.e. landlord and tenant with assistance of non lawyers and Court clerks.

The court should also recognize that for instance a New York stock brokerage firm may have an office in Florida and that an investor may be a resident of Canada or elsewhere with a winter home in Florida and that Florida is a place of convenience for arbitration on federal securities matters between them and that it is even less convenient to impose a requirement beyond the present rule, i.e. investor may be represented by an uncompensated non-lawyer, or represented by a licensed lawyer in good standing in any jurisdiction.

It is, however, somewhat disconcerting to have the Bar (page 9 of their brief) cite another brief not of record here (see footnote) on their page 9.

In Perry v. Thomas, 107 S.Ct. 2520;482 U.S. 483, 96. L.Ed 2d 426 (1987),

the Supreme Court held that under the Supremacy Clause, the Federal Arbitration Act preempted the California Labor Code. The case while holding both state and federal courts could enforce the FAA, further held that it created a body of substantive law under the Interstate Commerce Act. The right to enforce the procedures is within the inherent jurisdiction of the Court applying federal law. Therefore, in any event the Florida Supreme Court should determine what Federal Court action would be and if the Federal Court would permit Rapoport to act, there is no reason for the Florida Supreme Court to adopt a new rule prohibiting him or any other similarly situated licenced lawyer from acting in Federal Arbitration proceedings.

POINT III

DUE PROCESS IS NOT SERVED BY EXPARTE DETERMINATION AS A "SUMMARY JUDGMENT" AND TO DENY CONTINUANCE WHEN MEDICAL REASONS SHOW REASONABLE BASIS, THE DENIAL IS CONTRARY TO ACCEPTED PROFESSIONALISM AND DUE PROCESS.

The Bar admits they thwarted discovery by Rapoport. They failed to show why no hearing was held. Their citation to Kozich v. Hartford Ins. Co., 609 So.2d 147 (Fla.App. 4 DCA 1992), and Greene v. Seigle, 745 So.2d 411 (Fla. App. 4 DCA 1999), show that the very district in which this matter was considered has consistently held notice of hearing and hearings are mandatory for Summary Judgment under the rule as fundamental due process. See also Bechtold v. Griffens, 592 So.2d. 377 (Fla. App. 4 DCA 1992) Mondstern v. Duval Fed., 500 So.2d 580 (Fla.App. 4 DCA 1987). See also Wagner v. Vigor Island, 443 So.2d 489 (Fla.App. 5 DCA 1984).

Presuming, but not agreeing, that Summary Judgment is permissible under the rules on unauthorized practice of law, the Rules of Civil Procedure 1.510 (c) provides in pertinent part:

"...and shall be served at least 20 days before the time fixed for hearing".

(emphasis added).

Nowhere is there a notice or time fixed for hearing.

The argument about extension of time is facetious. Respondent, because of severe health conditions, asked for time. It was abuse of discretion to deny it. The Bar's assertion the Referee was under time pressure is not an answer. The Referee sought and obtained an extension but proceeded to file a report anyhow without a hearing.

This was incorrect and a facile denial of due process and abuse of discretion.

CONCLUSION

The Order Granting Summary Judgment should be vacated as should the Report of the Referee and the proceedings dismissed and the Respondent exonerated and allowed his costs and reasonable attorney's fees in these proceedings.

Respectfully submitted:

AINSLEE R. FERDIE

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the Respondent's Reply Brief was mailed this ___ day of May, 2002 to: Janet Elizabeth Bradford. Esq., Branch UPL Counsel, The Florida Bar, 5900N. Andrews Avenue, Suite 835, Ft.Lauderdale, Fl. 33309; Hon James T. Carlisle, Referee, South County Courthouse, 200 W. Atlantic Avenue, Delray Beach, Fl. 33444.

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By:_____
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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that I have complied with the font requirements of Rule. 9.210.

By:_____
AINSLEE R. FERDIE
F.B. #024273