IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant-Appellee,

v.

MARJORIE HOLLMAN SHOUREAS,

Respondent-Appellant.
_____/

Case No. SC03-293

TFB Case Nos.
2002-51,797(17J)
2003-50,524(17J)

THE FLORIDA BAR'S ANSWER BRIEF

ADRIA E. QUINTELA, #897000
Bar Counsel
The Florida Bar
5900 North Andrews Avenue, Suite 835
Fort Lauderdale, Florida 33309
(954) 772-2245

JOHN ANTHONY BOGGS, #253847
Staff Counsel
The Florida Bar
651 East Jefferson Street

Tallahassee, Florida 32399-2300
(850) 561-5600

JOHN F. HARKNESS, JR., #123390
Executive Director
The Florida Bar
651 East Jefferson Street
Tallahassee, Florida 32399-2300
(850) 561-5600

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PRELIMINARY STATEMENT

The Florida Bar, Appellee, will be referred to herein as "The Florida Bar" or "the Bar." Marjorie Hollman Shoureas, Appellant, will be referred to as "Respondent." All documentary references, unless otherwise noted, will be from the Report of Referee and indicated as "RR" (page number).

THE FLORIDA BAR'S SUPPLEMENT TO RESPONDENT'S/APPELLANT'S STATEMENT OF THE CASE AND THE FACTS

Because Respondent's/Appellant's statements of the case and of the facts are incomplete, The Florida Bar supplements them as follows:

STATEMENT OF THE CASE AND THE FACTS

A. The Florida Bar Case Number 2002-51,797(17J)

Respondent was charged with a seven (7) count complaint which consolidated two Florida Bar grievances pending against Respondent. Florida Bar Case Number 2002-51,797(17J) involved a complaint filed by Felipe Mantorval, a client of Respondent's, and by Nancy Knollenberg, a representative of Pilot Finance, Inc., a company to whom Mr. Mantorval assigned his interests in the settlement Respondent was to procure on his behalf to.

In or about October 2000, Mr. Mantorval hired Respondent to represent him in a personal injury case against Publix Supermarkets. RR2. Respondent accepted the representation and collected a fee for her services. RR2. Despite taking Mr. Mantorval's money, Respondent took no action on his case, never filed a case against Publix

Supermarkets on behalf of her client, and failed to take any steps to communicate with Mr. Mantorval, despite Mr. Mantorval's repeated attempts to communicate with her. RR2 and RR3. Said facts were all admitted at the final hearing in this matter by virtue of the fact that Respondent chose to ignore the Bar proceedings, never contested any of the allegations, and failed to attend the final hearing, despite being properly noticed. Based on all of these facts which were deemed admitted, the Referee found Respondent guilty of violating Count I of the Bar's Complaint which alleged violations of R. Regulating Fla. Bar 3-4.2 [Violation of the Rules of Professional Conduct as adopted by the rules governing The Florida Bar is a cause for discipline.]; R. Regulating Fla. Bar 4-1.1 [A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.] and R. Regulating Fla. Bar 4-1.3 [A lawyer shall act with reasonable diligence and promptness in representing a client.]. RR7.

Furthermore, the Referee also found that Respondent was guilty of violating Count II of the Bar's Complaint which charged her with violations of R. Regulating Fla. Bar 3-4.2 [Violation of the Rules of Professional Conduct as adopted by the rules governing The Florida Bar is a cause for discipline.]; R. Regulating Fla. Bar 4-1.4(a) [A lawyer

shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.] and R. Regulating Fla. Bar 4-1.4(b) [A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.] RR7.

The Referee further found that in or about August 2002, Mr. Mantorval authorized Respondent to pay certain monies owed to Pilot Finance, Inc. out of any settlement received from Publix Supermarkets. RR3. Mr. Mantorval further authorized Respondent to release any and all information about his case to Pilot Finance, Inc. RR3. It was further found by the Referee that after this authorization, Pilot Finance, Inc. made numerous attempts to contact Respondent to ascertain the status of the case, but that Respondent continually failed to return the calls or e-mails and failed to keep Pilot Finance, Inc. informed as to the status of the case. RR3. Because of this, the Referee found Respondent guilty of violating Count III of the Bar's Complaint which alleged violations of R. Regulating Fla. Bar 3-4.2; R. Regulating Fla. Bar 4-1.4(a) and R. Regulating Fla. Bar 4-1.4(b). RR8.

As to Count IV of the Bar's Complaint, Respondent was also found guilty by the Referee who entered the following findings of fact. On or about July 3, 2002, bar counsel sent a letter to Respondent with a copy of the

grievance filed against her requesting her response by July 18, 2002. RR3. Respondent failed to respond. RR3. Respondent was then sent a subsequent letter by regular and certified mail, return receipt requested, on or about July 19, 2002, again requesting a response. RR4. While Respondent received the same on or about August 5, 2002, as evidenced by the signature on the green card receipt, she failed to respond to the same. RR4. Respondent was given yet another opportunity to respond by means of another letter sent to her now pertaining to the grievance filed against her by Mr. Mantorval. This letter was sent to Respondent on or about August 8, 2002. RR4. Respondent failed to respond to this letter as well. RR4. Finally, on or about September 25, 2002, bar counsel sent Respondent, by regular and certified mail, return receipt requested, a notice of hearing and requested a response on or before October 25, 2002. RR4. Respondent never responded to any correspondence by the Bar, despite being given ample opportunity to do so. RR4. The Referee thus found her guilty of Count IV of the Bar's Complaint for violating R. Regulating Fla. Bar 4-8.4(g) [A lawyer shall not fail to respond, in writing, to any official inquiry by a disciplinary agency, as defined elsewhere in these rules, when such agency is conducting an investigation into the lawyer's conduct.].

B. The Florida Bar Case Number 2003-50,524(17J)

Consolidated with the above matter (the Mantorval/Knollenberg complaints) was a complaint filed by Sylvia Herrera against the Respondent. Ms. Herrera hired the Respondent on or about March 4, 2002, to represent her in a dissolution of marriage proceeding and paid Respondent a $450 fee for the representation. RR5. Like in Mr. Mantorval's case, Respondent took little or no significant action in the case. RR5. After hiring Respondent, Ms. Herrera made numerous attempts to contact Respondent to ascertain the status of her case. RR5. Despite leaving numerous messages and attempting to make appointments with Respondent, Ms. Herrera was never able to discuss her case or ascertain the status of the matter. RR5. The Referee thus found Respondent guilty of violating Count V of the Bar's Complaint which charged her with violations of R. Regulating Fla. Bar 3-4.2 and R. Regulating Fla. Bar 4-1.3, and Count VI of the Bar's Complaint which charged her with violating R. Regulating Fla. Bar 4-1.4(a) and R. Regulating Fla. Bar 4-1.4(b). RR8-9.

Like in Mr. Mantorval's case and Bar matter, Respondent again failed to respond to any of Ms. Herrera's allegations or to appear for the final hearing in the Bar matter, despite being properly noticed of the same. The Referee thus made the following findings. In or about October 2002, Ms. Herrera filed a complaint against Respondent. RR5.

On or about October 23, 2002, the Bar sent a letter to Respondent with a copy of the grievance filed against her requesting her response. RR5. Respondent failed to respond. RR6. Subsequently, on or about November 14, 2002, the Bar sent another letter to the Respondent, by regular and certified mail, return receipt requested, asking for Respondent to respond to the allegations. RR6. The letter sent to Respondent's office was received by her office as evidenced by the signed green card receipt. RR6. Respondent still did not respond. Finally, on or about November 27, 2002, the Bar sent Respondent by regular and certified mail, return receipt requested, a notice of hearing again requesting a response and giving her yet another opportunity to respond. RR6. No response was ever received. RR6. The referee thus found Respondent guilty of violating Count VII of the Bar's Complaint which charged her with a violation of R. Regulating Fla. Bar 4-8.4(g). RR9. The Referee recommended that Respondent be disbarred from the practice of law for a period of five (5) years and that full restitution be made to Mr. Mantorval and Ms. Herrera as a condition precedent to Respondent's readmission to the Bar. RR9.

SUMMARY OF ARGUMENT

Respondent, despite the fact that she never contested any of the Bar proceedings, in fact ignoring the same and showing a total lack of disregard for the process, now wishes this Court to set aside the findings made by the Referee. Respondent would argue to this Court that these findings should be set aside and that the discipline given to her, disbarment, is not warranted. To allow Respondent to make a mockery of the Bar process by her willing refusal to participate in any portion of the proceedings, despite ample notices and opportunities given to her, and to allow her to abandon her clients and her practice without receiving a disbarment would be inappropriate, unjust, and contrary to justice.

Disbarment is the appropriate remedy for a lawyer who has taken money from her clients and failed to represent them, failed to diligently pursue their cases, failed to communicate with them, has abandoned her clients and her practice, has failed to participate in any part of the disciplinary process, has ignored repeated requests for a response to Bar complaints, and has prior discipline for engaging in the same type of conduct she is accused of in the instant case.

Respondent has abused the privilege of practicing law and deserves the harshest sanction available.

ARGUMENT

POINT I - THE REFEREE'S FINDINGS ARE CLEARLY SUPPORTED BY THE RECORD, ARE NOT CLEARLY ERRONEOUS, AND SHOULD THEREFORE BE UPHELD.

Respondent attempts to advance a two prong argument. First, she attempts to argue several times throughout her Initial Brief that there is not enough record evidence to support the Referee's findings of guilt in that there is a lack of specificity as to how Respondent neglected Mantorval's and Herrera's case and how she failed to communicate with them. Respondent, however, eventually acknowledges that the alleged lack of specificity, if any, is due to the fact that the referee entered a default judgment against Respondent for her failure to contest any of the Bar's allegations and her failure to appear at the final hearing.

Respondent also alleges that there is no evidence to support a violation of R. Regulating Fla. Bar 4-1.4(a) and (b) in Count III of the Bar's Complaint in that Pilot Finance, Inc. is not a client of Respondent's, thus she has no duty to communicate with them. As found by the Referee, Mr. Mantorval not only authorized Respondent to pay certain monies owed to Pilot Finance, Inc. out of any settlement received from Publix Supermarkets, but also authorized Respondent to release any and all information about his case to Pilot Finance, Inc. RR3. As a result of this, Pilot

Finance, Inc. became an agent of Mr. Mantorval's and therefore stood "in the shoes" of Mr. Mantorval, and thus Respondent had a duty to communicate with them as well. See Font v. Stanley Steemer International, Inc., 849 So. 2d 1214 (Fla. 5th DCA 2003); King v. Young, 107 So. 2d 751 (Fla. 2d DCA 1958)(An agent steps into the shoes of the principal and acts for him pursuant to the grant of authority vested in him by his principal). Thus, the Referee made a correct finding when he found that Respondent violated R. Regulating Fla. Bar 4-1.4(a) and 4-1.4(b) by failing to communicate with representatives of Pilot Finance, Inc.

In considering Respondent's argument and evaluating the Referee's findings of fact, the Court will recall the principles articulated in The Florida Bar v. Dubbeld, 748 So. 2d 936, 940 (Fla. 1999):

> A referee's findings of fact regarding guilt carry a presumption of correctness that should be upheld unless clearly erroneous or without support in the record. The Florida Bar v. Beach, 699 So. 2d 657, 660 (Fla. 1997). If the referee's findings are supported by competent, substantial evidence, this Court is precluded from reweighing the evidence and substituting its judgment for that of the referee. The Florida Bar v. Bustamante, 662 So. 2d 687, 689 (Fla. 1995). The party contending that the referee's findings of fact and conclusions as to guilt

> are erroneous carries the burden of demonstrating that there is no evidence in the record to support those findings or that the record evidence clearly contradicts the conclusions. The Florida Bar v. Miele, 605 So. 2d 866, 868 (Fla. 1992).

Accordingly, it is Respondent's burden to prove that there is no record evidence to support the Referee's findings, or that such evidence contradicts her conclusions. She met neither burden in her Initial Brief. To the contrary, the record is replete with evidence to support both the Referee's findings that Respondent is guilty of violating all of the rules charged by the Bar, and that disbarment is the only appropriate sanction.

POINT II - DISBARMENT IS THE APPROPRIATE SANCTION FOR A LAWYER WHO TAKES MONEY FROM HER CLIENTS AND NEGLECTS THEM AND THEIR CASES, FAILS TO COMMUNICATE WITH HER CLIENTS, WILLFULLY REFUSES TO PARTICIPATE IN THE BAR DISCIPLINARY PROCESS, ABANDONS HER CLIENTS, AND HAS ALREADY RECEIVED PRIOR DISCIPLINE FOR SIMILAR MISCONDUCT.

A. The Case Law Supports Disbarment

The argument most advanced by Respondent's Initial Brief is that disbarment is too harsh a discipline for Respondent. Instead, Respondent argues that a lesser sanction of some sort is appropriate as disbarment is an extreme

sanction. First, it should be noted that the Court has held that neglect of legal matters warrants disbarment. See The Florida Bar v. Gunther, 400 So. 2d 968 (Fla. 1981). Gunther is extremely similar to the instant case in that respondents in both Gunther and the instant case had each agreed to represent their clients and collected fees for the representation; in each case thereafter failed to take any action on the client's behalf; in both cases the clients repeatedly attempted to contact the Respondent after their initial consultation and payment of fee to no avail; and in both cases Respondents made no appearance before the Referee. Id. at 969. See also The Florida Bar v. Friedman, 511 So. 2d 986 (Fla. 1987) (Neglect of legal matters and other violations and the abandonment of a law practice warrants disbarment); The Florida Bar v. Setien, 530 So. 2d 298 (Fla. 1988) (Disbarment is appropriate when an attorney neglects client matters).

Likewise, in The Florida Bar v. Mitchell, 385 So. 2d 96 (Fla. 1980), the Court held that:

> Complete disregard of responsibilities as lawyer and as officer of court, resulting in serious harm to public, without any known mitigating reasons, would warrant disbarment. Id. See also The Florida Bar v. Horowitz, 697 So. 2d 78 (1997).

In the instant case, like in Mitchell, Respondent has shown a total and complete disregard of her duties. She has accepted fees from clients, done no work on their cases, refused to communicate with them, and totally abandoned them. No mitigation has been shown.

In The Florida Bar v. Murray, 489 So. 2d 30 (Fla. 1986), the Court also found that neglecting legal matters warrants disbarment without leave to reapply for admission for a period of five years. Id. at 31. In Murray, unlike in the instant case, there was evidence introduced that Respondent suffered from drug and alcohol problems, thus perhaps explaining or mitigating his misconduct. Murray at 30. No such evidence was ever introduced or alluded to by the Respondent in the instant case, thus making her misconduct much more inexcusable than that in Murray; See also The Florida Bar v. Bartlett, 509 So. 2d 287 (Fla. 1987).

In Bartlett, the Court made several findings which are clearly applicable to the instant case. First, the Court stated that repeated similar instances of attorney misconduct should be treated cumulatively so that the lawyer's disciplinary history can be considered as grounds for more serious punishment than the misconduct considered in isolation might seem to warrant. Id. at 289. Thus, while Respondent in the instant case argues that a public reprimand is the

appropriate sanction, this would only apply to an isolated instance of neglect where the Respondent does not engage in other violations, does not abandon her practice, and has no prior disciplinary history. The instant case involves much more than an isolated instance of neglect and deals with a respondent who has prior disciplinary history as was considered by the Referee and as will be discussed in greater detail below.

In Bartlett the Court also stated that refusal to participate at all in the disciplinary process when a lawyer is accused of misconduct calls into serious question that lawyer's fitness for the practice of law. Id. What is most astonishing about the instant case is Respondent's total disregard for her clients and the Bar throughout all of these proceedings and her sudden plea to this Court to excuse her conduct. Respondent's conduct, contrary to all of her arguments, warrants only the most severe sanction.

Finally, in Bartlett, the Court held that the appropriate sanction for an attorney's neglect of all legal matters that had been entrusted to him when the attorney had been similarly disciplined in the past for that kind of misconduct is disbarment. Id. at 288. The Referee took into account in the instant case, as he should, and as did the Referee in Bartlett, Respondent's prior discipline. In the instant case, Respondent has been the subject of prior disciplinary

orders, specifically, Respondent received a ninety-one (91) day suspension in Case Number SC02-2226. RR9, 11. This prior suspension also involved Respondent's neglect of clients. RR11. While Respondent argues that normally neglect warrants a public reprimand, she fails to mention that in all of the cases cited, The Florida Bar v. Price, 569 So. 2d 1261 (Fla. 1990); The Florida Bar v. Whitaker, 596 So. 2d 672 (Fla. 1992); and The Florida Bar v. Barcus, 697 So. 2d 71 (Fla. 1997), clear distinctions apply.

In Price the attorney disciplined had no prior disciplinary history and the Court specifically stated that " . . . his conduct only resulted in an inconvenience and annoyance to his clients." Price at 1262. In the instant case, however, Respondent has significant prior discipline and her conduct in abandoning her clients and their cases resulted in prejudice to the clients, not a mere annoyance. The Court has always treated cumulative misconduct more harshly than an isolated and single act of misconduct. The Florida Bar v. de la Puente, 658 So. 2d 65, 70 (Fla. 1995).

In Whitaker, likewise, the Respondent had no disciplinary history, thus the Court found that a public reprimand with probation was more appropriate. Whitaker at 674.

Barcus, cited by Respondent, is also clearly distinguishable. First, Barcus, unlike Respondent, had no prior disciplinary history. Barcus at 73. Second, the Referee found that the complainants had taken advantage of Barcus and manipulated him. Barcus at 75. Third, there was no finding by the Referee in Barcus that the complainants had suffered any harm. Id. Finally, the Court noted there was no pattern of negligence. Id. All of these factors clearly make Barcus distinguishable form the instant case.

Additionally, in not one of those cases did Respondent abandon her practice, abandon her clients or show a total disregard for the Bar proceedings unlike in the instant case. Time and time again, the Court has held that an attorney who abandons her practice and clients should be disbarred. See Friedman.

B. The Florida Standards for Imposing Lawyer Sanctions Warrant Disbarment

Furthermore, not only did the Referee find that the case law supports disbarment for Respondent's misconduct in the instant case, as did the fact that Respondent's prior discipline should be considered as an aggravating factor, but the applicable Florida Standards for Imposing Lawyer Sanctions also mandate disbarment. In assessing what discipline

is appropriate the Court must consider the duty violated, the lawyer's mental state, the potential or actual injury caused by the lawyer's misconduct, and the existence of aggravating or mitigating factors.

Under Fla. Stds. Imposing Law. Sancs. 4.41, the Referee found that disbarment was appropriate. RR10.

> Disbarment is appropriate when:
> (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or
> (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
> (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

There is no doubt that Respondent abandoned her practice, failed to perform the services she was paid and hired to perform, and engaged in a pattern of neglect with respect to client matters which led to injury to her clients.

C. The Aggravating/Mitigating Factors Also Warrant Disbarment

There are several aggravating factors found by the Referee in the instant case which also make a disbarment the only appropriate sanction. First, Respondent, as stated above, was disciplined for similar misconduct on February 20, 2003 (date of Order) receiving a ninety-one (91) day suspension. RR9,11. Respondent, therefore, unlike in the cases

cited by her, is no stranger to the disciplinary process, having, in fact, significant disciplinary history. The Referee found that this was an aggravating factor pursuant to The Florida Standards for Imposing Lawyer Sanctions under Fla. Stds. Imposing Law. Sancs. 9.22(a).

The Referee also found that Respondent had engaged in a pattern of misconduct under Fla. Stds. Imposing Law. Sancs. 9.22(c) RR9, obstructed the disciplinary process under Fla. Stds. Imposing Law. Sancs. 9.22(e) RR10, and was indifferent to making restitution under Fla. Stds. Imposing Law. Sancs. 9.22(k) RR10.

All of these factors were proper for consideration by the Referee and lead to the only logical conclusion - the Referee's findings must stand as they were supported by the record and were appropriate given the case law, standards and aggravating factors present.

CONCLUSION

Respondent was found guilty by the Referee of numerous rule violations in several client matters. She was also found to have been nonresponsive to the Bar and to have abandoned her clients and her practice. She has prior discipline for similar misconduct, which the Referee took into account in making his finding. Those findings are all

supported by the record and are not clearly erroneous. This Court has the duty to uphold those findings unless they are found to be clearly erroneous. Furthermore, Respondent has demonstrated a total disregard and disrespect for her clients, her profession, and the Bar. The Referee found that said conduct, taken in totality, considering the appropriate standards, the case law, the aggravating factors which are present, and her past disciplinary history, warrants disbarment. There is ample support for that conclusion, and in fact, no other conclusion would be appropriate. As such, this Court should uphold the Referee's findings and his recommendation that Respondent be disbarred.

Respectfully submitted,

_____
ADRIA E. QUINTELA, #897000
Bar Counsel
The Florida Bar
5900 North Andrews Avenue, Suite 835
Fort Lauderdale, Florida 33309
(954) 772-2245

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing Answer Brief have been furnished by regular U.S. mail to Kevin P. Tynan, Counsel for Respondent, at Richardson & Tynan, 8142 North University Drive, Tamarac, Florida 33321; and to Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300 on this _____ day of September, 2003.

_____

ADRIA E. QUINTELA

CERTIFICATE OF TYPE, SIZE AND STYLE AND ANTI-VIRUS SCAN

Undersigned counsel hereby certifies that the brief of The Florida Bar is submitted in 14 point, proportionately spaced, Times New Roman font, and that the computer disk filed with this brief has been scanned and found to be free of viruses by Norton Anti-Virus for Windows.

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ADRIA E. QUINTELA

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