

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

WILLIAM SUMNER SCOTT

Respondent.

Supreme Court Case
No. SC05-1145

The Florida Bar File
No. 2003-70,488(11J)

THE FLORIDA BAR'S CROSS-REPLY BRIEF

ARLENE KALISH SANKEL
Chief Branch Discipline Counsel
Florida Bar No. 272981
The Florida Bar
444 Brickell Avenue, Suite M-100
Miami, Florida 33131
(305) 377-4445

KENNETH LAWRENCE MARVIN
Staff Counsel
Florida Bar No. 200999
The Florida Bar
651 East Jefferson Street
Tallahassee, Florida 32399-2300
(850) 561-5600

JOHN F. HARKNESS, JR.
Executive Director
Florida Bar No. 123390
The Florida Bar
651 East Jefferson Street
Tallahassee, Florida 32399-2300
(850) 561-5600

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SYMBOLS AND REFERENCES

For the purposes of this brief, William Sumner Scott will be referred to as “Respondent”, The Florida Bar will be referred to as “The Florida Bar” or “the Bar” and the referee will be referred to as the “Referee”. Additionally, the Rules Regulating The Florida Bar will be referred to as the “Rules” and the Florida Standards for Imposing Lawyer Sanctions will be referred to as the “Standards”.

References to the Amended Report of Referee will be by the symbol “Amended ROR.” followed by the corresponding page number(s). References to the transcript of the final hearing held on June 18, 19, and 20, 2007, July 10, 2007 and August 15, 2007, will be by the symbol “TR.”

Finally, documents introduced into evidence by The Florida Bar will be designated “TFB Ex.” and Respondent’s exhibits will be designated “Resp. Ex.” followed by the corresponding exhibit number and page number(s), if applicable.

STATEMENT OF THE CASE AND OF THE FACTS

The Florida Bar will rely on its Statement of the Case and of the Facts set forth in its Answer/Cross-Initial Brief.

SUMMARY OF THE ARGUMENT

The gravamen of The Florida Bar's Complaint against William Sumner Scott is that he engaged in conduct involving dishonesty and significant conflicts of interest. On that basis, the Referee properly concluded that Respondent's actions of failing to disclose the criminal and unsavory background of his former client, Richard Maseri, and then proceeding to represent the interests of ICEC and its individual investors against Steven Frankel in an attempt to secure a release of the funds that had been frozen as a result of Maseri's criminal acts constituted conduct in violation of Rules 4-8.4(c) (misconduct), 4-1.7(a) (representing adverse interests), 4-1.9(a) (conflict of interest; former client), 4-1.16(a)(1) (declining or terminating representation), and 4-4.1(a) (truthfulness in statements to others) of the Rules Regulating The Florida Bar.

In light of the Referee's extensive findings and the serious nature of Respondent's misconduct, it is The Florida Bar's position that the Referee's recommended eighteen (18) month suspension is simply not appropriate and that Florida's Standards for Imposing Lawyer Sanctions and this Court's own case law more strongly support the imposition of a three (3) year suspension.

ARGUMENT

I

(On Reply)

A THREE-YEAR SUSPENSION IS THE APPROPRIATE DISCIPLINE GIVEN THE REFEREE'S FINDING THAT RESPONDENT'S MISREPRESENTATIONS AND OMISSIONS AS TO MASERI'S CHARACTER CONSTITUTED CONDUCT INVOLVING DISHONESTY, AS WELL AS HIS FINDING THAT RESPONDENT ENGAGED IN SIGNIFICANT CONFLICTS OF INTEREST, ALL IN VIOLATION OF THE RULES OF PROFESSIONAL CONDUCT.

On August 4, 1998, Respondent, his client, Richard Maseri, and Steven Frankel were to meet pursuant to finalizing Frankel's investment in the ICEC business venture with Maseri. Prior to Maseri's arrival at that meeting, a conversation ensued between Respondent and Frankel during which it became apparent to Respondent that Frankel was not aware of Maseri's unsavory past which included a criminal history, as well as federal court orders prohibiting Maseri from engaging in the commodities business. (TR. 73-75, 102, 107.) Nonetheless, Respondent failed to disclose those facts to Frankel when Frankel asked him about Maseri's reputation and background. Instead, Respondent's answers misled Frankel into believing that Maseri was an honest man and that they would have no difficulty working together. As a result, Frankel signed the shareholder agreement with Maseri. (TR. at 75.)

Respondent contends that he had no attorney client relationship with Frankel

at that August 4, 1998 meeting and consequently, Frankel had no right to rely on him. Respondent misses the point. He is a lawyer and a member of The Florida Bar. As such, his words carry particular weight and credence. This Court has previously stated that lawyers are held to a higher standard of conduct than non-lawyers even when conducting business unrelated to the practice of law. See *The Florida Bar v. Hosner*, 520 So.2d 657 (Fla. 1988). Also see *The Florida Bar v. Bennett*, 276 So.2d 481 (Fla. 1973), where this Court stated that “... an attorney is an attorney” and which stands for the proposition that lawyers must avoid tarnishing the professional image or damaging the public which may rely upon their professional standing.

Admittedly, Respondent did not represent Frankel during that conversation; however, that did not obviate his responsibility and duty to disclose the non-public information he had in response to a specific query. Had he answered honestly, Frankel would not have invested in the venture. His testimony at trial was that he relied on Respondent’s assertions of Maseri’s honesty and reputation, but that had he known the truth, he would not have proceeded with the venture. (TR. at 75, 107.)

Respondent’s final assertion is that Frankel signed retainer agreements with him dated December 18 and 21, 1998, in order to allow Respondent to sue Frankel should the funds in the ICEC accounts have proven insufficient to pay back the

other ICEC investors. Respondent's suggestion is belied by the documents themselves. On or about December 18, 1998, Frankel, individually, entered into a retainer agreement with Respondent, whereby Respondent agreed "... to attempt to have the accounts which hold your funds at Prudential released."¹ (TR. at 109-110; TFB Ex. 8.) In addition, on December 21, 1998, Frankel signed an Addendum to Retainer Agreement with Respondent. (TR. at 111-112; TFB Ex. 9.) The Addendum was drafted by Respondent, but Frankel revised the document to indicate that Respondent would be representing "... Frankel, not as Director, but as lender to ICEC...." (TR. at 112; TFB Ex. 9.) During the time period between the date when Respondent first learned of the raid on December 15, 1998 and the date he signed the Addendum on December 21, 1998, Frankel was unaware that any ICEC funds had been misappropriated. (TR. at 113.)

The Referee's findings are amply supported by the clear and convincing evidence produced at trial. Respondent's dishonest conduct, compounded by his numerous conflicts of interest, are such that a three (3) year suspension is the appropriate discipline to be imposed.

¹ The same retainer agreement provided that Respondent's representation of ICEC had been terminated on December 12, 1998, following a difference of opinion as to whether the business should continue or liquidate. (TFB. Ex. 17.)

CONCLUSION

Based upon the foregoing, as well as the reasons and citations of authority initially expounded in The Florida Bar's Answer Cross/Initial Brief, The Florida Bar respectfully submits that the Referee's recommendation of discipline is too lenient and that Respondent should receive a three (3) year suspension.

Respectfully submitted,

ARLENE KALISH SANKEL
Chief Branch Discipline Counsel
The Florida Bar
Florida Bar No. 272981
444 Brickell Avenue, Suite M-100
Miami, Florida 33131
(305) 377-4445

KENNETH LAWRENCE MARVIN
Staff Counsel, The Florida Bar
Florida Bar No. 200999
651 East Jefferson Street
Tallahassee, Florida 32399-2300
(850) 561-5600

JOHN F. HARKNESS, JR.
Executive Director, The Florida Bar
Florida Bar No. 123390
651 East Jefferson Street
Tallahassee, Florida 32399-2300
(850) 561-5600

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that the original and seven (7) copies of The Florida Bar's Cross-Reply Brief were sent via U.S. Priority Mail to the Honorable Thomas D. Hall, Clerk, Supreme Court Building, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399; and a true and correct copy was emailed to William Sumner Scott, Respondent, at *wscott@wscottlaw.com*, and mailed to William Sumner Scott, Respondent, 36 N.W. 6th Avenue, Apartment 409, Miami, Florida 33128; and a true and correct copy was mailed to Kenneth L. Marvin, Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399, on this _____ day of December, 2009.

ARLENE KALISH SANKEL
Chief Branch Discipline Counsel

CERTIFICATE OF TYPE, SIZE AND STYLE

I **HEREBY CERTIFY** that the Cross-Reply Brief of The Florida Bar is submitted in 14 point proportionately spaced Times New Roman font in Microsoft Word format.

ARLENE KALISH SANKEL
Chief Branch Discipline Counsel