IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

Case No. SC07-863

v.

TFB File No. 2004-01,364(1B)

SHERRY GRANT HALL,

Respondent.
_____/

THE FLORIDA BAR'S INITIAL BRIEF

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PRELIMINARY STATEMENT

Complainant, THE FLORIDA BAR, will be referred to as "The Florida Bar" throughout the Initial Brief.

Respondent, SHERRY GRANT HALL, will be referred to as "Respondent".

References to the Transcript for Final Hearing on October 20-21, 2008, shall be designated as “TFH” with the appropriate volume and page number, i.e., “TFH-12, Vol. I or Vol. II.”

References to the Transcript for the Penalty Hearing on November 4, 2008, shall be designated as “TPH” with the appropriate page number, i.e., “TPH-12.”

References to the Rules Regulating The Florida Bar shall be designated as “Rule” with the appropriate number, i.e., “Rule 4-1.3” or as “Rules.”

References to the Florida Standards for Imposing Lawyer Sanctions shall be designated as “Standard” or “Standards” with the appropriate number, i.e., Standard 7.1.

References to the “Report of Referee” dated November 20, 2008, shall be designated as “ROR” followed by the appropriate number, i.e., “ROR-12.”

References to the Florida Bar’s Exhibits shall be designated as “TFB Exhibit” followed by the appropriate number, i.e., “TFB Exhibit-12.”

References to Respondent's Exhibits shall be designated as "R Exhibit" followed by the appropriate number, i.e., "R Exhibit-12."

References to all other pleadings and documents will be designated by their appropriate title in the record, i.e., Complaint, Motion for Summary Judgment, etc.

STATEMENT OF THE CASE

On May 7, 2007, The Florida Bar filed its Complaint with the Florida Supreme Court. Respondent's counsel filed a Notice of Appearance on June 20, 2007, and an Answer to the Complaint with Affirmative Defenses on June 25, 2007. The referee held a Telephonic Case Management Conference with the parties' counsel and issued an Order on Telephonic Case Management conference on July 18, 2007.

The parties engaged in discovery from August 2, 2007 through October 22, 2007. The referee held a second telephonic case status conference with the parties' counsel on December 13, 2007. From January 2, 2008 through July 16, 2008, the parties' counsel continued to set numerous depositions of the witnesses listed in the discovery responses. On May 13, 2008, the referee held a telephonic hearing on an Objection to a Deposition Subpoena Duces Tecum and issued an Order on June 16, 2008, instructing what documents should be produced by the witness. The referee held telephonic case status conferences on August 22, 2008, and on September 2, 2008.

On September 9, 2008, The Florida Bar personally served a Second Set of Interrogatories and a Second Request for Production of Documents on Respondent that were answered on October 13, 2008. The parties set depositions of expert witnesses on October 8, 2008. The Florida Bar took the deposition of a lay witness and an expert

witness on October 15, 2008, and October 17, 2008, respectively. On October 17, 2008, Respondent filed a Motion in Limine with the referee.

The referee held a final hearing in Shalimar, Florida, on October 20-21, 2008. The referee held a telephonic case management conference on October 27, 2008, to finalize a penalty hearing date. On October 30, 2008, Respondent submitted a Witness List for Sanctions Hearing to the Referee. On October 31, 2008, the referee held a telephonic case management conference to discuss Respondent's witness list. A final penalty hearing was held on November 4, 2008, in Panama City, Florida. The Florida Bar filed its Affidavit of Costs on November 7, 2008.

STATEMENT OF THE FACTS

The referee made the following findings of fact in this disciplinary case:

In late 2000, Respondent, Sherry Hall, approached Irving and Clara Godwin, property owners in Walton County, about leasing a portion of their pasture for her horses. After negotiations, Respondent went to visit the Godwins, bringing with her a pre-prepared lease agreement for a portion of the land. On January 21, 2001, the lease agreement was signed. At the time of the signing at the Godwins' home, the parties discussed the possibility of the Godwins selling the pasture land as well as the remaining portions of the property to Respondent. After some discussion, and brief notes to herself, Respondent wrote an addendum on the lease which was then signed by the Godwins, Respondent, and a witness. Two copies were prepared and signed by all parties and the Godwins kept a copy with the handwritten addendum and Respondent retained a fully signed copy without the addendum. Respondent kept the notes for the addendum and the signed lease in a file at her home. ROR-3-4.

The handwritten addendum to the original Lease Agreement stated:

> Hall and Godwin agreed that Hall would obtain an appraisal, at her costs [sic], by the end of March. The parties will thereafter **negotiate an agreement** for Hall to purchase the pasture, mobile home park, and the Godwin residence, with time frames for such purchase to be at the election of

> Godwin and to be specified, along with this specific price(s), and a contract to be executed by those parties subsequent to this lease. ROR-4

Respondent received an appraisal of $83,000 for the property and offered to purchase the property from the Godwins which was refused. Later, the Godwins obtained an appraisal for a higher amount which Respondent refused to pay. Respondent continued to contact the Godwins to sell her the property over the next several months. After another year of communication to the Godwins and to realtors involved in attempting to sell the property, Respondent continued to insist she had an agreement to purchase the property as opposed to an agreement to negotiate a price for the property. ROR-4-5.

Eventually, Respondent sent a letter on February 21, 2003, attaching a document entitled "Lease Agreement and *Agreement for Sale*," purportedly signed on January 21, 2001, supposedly signed by the Godwins, Respondent and Joseph Grant who had witnessed the original lease document. Respondent recorded the fraudulent Lease Agreement and Agreement for Sale in the Walton County Clerk's Office on December 12, 2002, which had an added typed paragraph stating the parties shall thereafter "negotiate a time for *conveyance* of the property to Respondent and adding the words an Agreement for Sale to the first page of the document. ROR-5.

Three forensic document examiners reviewed the Lease and Agreement for Sale document with the typed language changed from the hand-written language and all concluded that signatures of Mr. and Mrs. Godwin, and the witness were forged, and that Respondent's signature was genuine. One of the document examiners felt that there were possible signs of excluding Respondent from having forged the documents and another stated there were possible signs including her as possibly having forged the other three signatures. Respondent was charged by the State Attorney's Office with two felonies, grand theft and uttering a forged instrument in reference to the fraudulent recording of the Lease Agreement and Agreement for Sale. ROR-5-6.

On August 21, 2006, Respondent entered into a Deferred Prosecution Agreement in which she agreed among other things to (1) quit claim any interest in the property of Irving or Clara Godwin to give them clear title of the property within 48 hours of signing the agreement, (2) to pay restitution to the Godwins of $15,000, (3) to acknowledge in writing that the existing lease between Respondent and the Godwins was null and void, (4) to vacate the pastureland and to relinquish any rights she might have had under the lease, (5) to execute any documents necessary to eliminate any cloud on the title to the Godwins' property resulting from the lease, and (6) to ensure that all sub-tenants or other persons occupying the pasture under Respondent's lease

would vacate the property. ROR-6.

On September 7, 2006, the charges were dismissed against Respondent because she had complied with the terms and conditions of the Deferred Prosecution Agreement. The Florida Bar Complaint against Respondent charged her with violation of rules Regulating the Florida Bar 3-4.3 Misconduct, 4-1.7(b) Conflict of Interest General Rule 2005, 4-1.8(a), 4-1.8(b) Conflict of Interest Prohibiting Transactions, 4-1.9(b) Conflict of Interest Former Client, this is on 13 of the Complaint, 4-1.16 Declining or Terminating Representation, 4-8.1 Bar Admission Disciplinary Matters, 4-8.4(c) Misrepresentation and 4-8.4(d) Conduct Prejudicial to the Administration of Justice. ROR-7

The Bar convinced the referee by clear and convincing evidence that Respondent violated rule 4-8.4(c) and the other violations were either withdrawn or inapplicable to this case. ROR-7.

The referee found that Respondent changed the title of the document from Lease to Lease and Agreement for Sale and added additional language to the lease, In these days of computers, it would have been impossible for Respondent to take the signed agreement back to her office and make it "look good" by typing in the language. A signed and fully executed agreement could not have had a paragraph added without

either handwriting it, or with the use of a typewriter. The changed Lease and Agreement for Sale was prepared again by computer with a changed title and a changed addendum and three forged signatures. ROR-7.

The referee found a violation of Rule 4-8.4(c)(A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation) The referee based her finding of this rule violation on the fact that Respondent admitted that she **deliberately and intentionally** changed the title of the documents and that she **intentionally** changed the language from the handwritten addendum to the printed language. [Emphasis added] ROR-8. Not only did the referee find that this made a substantial change in the content of the document, but stated that Respondent made these changes **for her own benefit.** [Emphasis added]. Respondent testified that since her signature was genuine on the forged document, she must have signed it in the process of signing multiple other documents and did not realize what she had done and that some unnamed person in her office must have forged the other three signatures. The referee found this testimony **"incredulous"** since there was no benefit for office staff to have forged the signatures. [Emphasis added]. ROR-8. Additionally, Respondent stated that she did not have a regular assistant to do clerical work for her but the lawyers did their own typing, and in fact, she had prepared this agreement on her home computer,

she did not have a file in the office, and 90-95% of her legal work was performed at home. ROR-8.

The witness Joseph Grant, as well as Mrs. Godwin, testified that the hand-written language placed on the document she retained, was also added to the second document retained by Respondent. Although there was no proof beyond a reasonable doubt that Respondent actually forged the signatures, there is no doubt that Respondent's signature was genuine and that was a factor to be considered. A fraud was committed when Respondent changed the name of the document and changed the language from the original document. ROR-9.

The referee also considered aggravating and mitigating factors under Standards 9.22 and 9.32 respectively. In aggravation, the referee found that a troubling aspect of this case is that Respondent attempted by means of numerous letters, phone calls, and visits to the Godwins to achieve her goal of purchasing the property at a price she desired to pay. Further, Respondent did not notify anyone of the changed terms in the second Lease Agreement and Agreement for Sale until February 2003 and continued to insist that she had an agreement to purchase the property not merely what could be considered as a possible option to purchase. ROR-10.

In mitigation, the referee found an absence of prior disciplinary history, and

Respondent was well-respected in her community as an honest, hardworking loyal friend involved in numerous community and church activities to the betterment of others. ROR-10.

Relying on Standard 7.2 and the aggravating and mitigation evidence presented, the referee found that a 90-day suspension would be appropriate for Respondent's misconduct. ROR-9.

SUMMARY OF ARGUMENT

The Florida Bar does not challenge the findings of fact by the referee, but solely the referee's recommendation of a 90-day nonrehabilitative disciplinary sanction. The referee found that Respondent had engaged in deliberate and intentional misconduct including fraud and misrepresentation, for her own benefit. Generally, the Court has imposed disbarment on attorneys who deliberately and intentionally violate Rule 4-8.4(c). Standard 7.1 states that "Disbarment is appropriate when an attorney intentionally engages in conduct that is a violation of a duty owed as a professional with intent to obtain a benefit for the lawyer,… and causes serious or potentially serious injury to a client, the public, or the legal system.". The referee, relying on Standard 7.1, stated in her report that, despite The Florida Bar's recommendation of disbarment at the final penalty hearing, she had considered "aggravation and mitigation pursuant to the Standards and found that a suspension from the practice of law for a period of ninety (90) days would be appropriate for Hall's misconduct." ROR-9.

The Florida Bar contends that while the mitigation considered by the referee might reduce a recommendation of disbarment to a suspension, it should not reduce a possible disbarment sanction to a nonrehabilitative 90-day suspension.

Respondent deliberately and intentionally engaged in felonious conduct, creating a fraudulent document and recording it with the Walton County Clerk's Office. The recording of the document put a cloud on the title of the Godwins' property and prevented them from selling it, requiring the Godwins to hire counsel to represent them in the dispute. Respondent was charged with forging and uttering a forged instrument by the State Attorney's Office and entered into a Deferred Prosecution Agreement that resulted in the charges being dismissed. The referee found as an aggravating factor that Respondent attempted through numerous contacts, letters, phone calls , and visits to the Godwins to achieve her goal of purchasing the property at a price Respondent wanted to pay. ROR-10. The referee also found as an aggravating factor that Respondent did not notify anyone of the changed terms of the lease agreement until February 2003. Further Respondent continuously misrepresented to third parties that she had a contract for sale, when she knew, or should have known as an attorney, that she had only negotiated an option to purchase the Godwins' property. ROR-10.

Even taking into account the mitigation considered by the referee, this Court should impose a three-year rehabilitative suspension as an appropriate disciplinary sanction under the Florida Standards for Imposing Lawyer Sanctions and the prevailing case law.

ARGUMENT

ISSUE I

THE COURT SHOULD IMPOSE A THREE-YEAR SUSPENSION AS AN APPROPRIATE DISCIPLINE UNDER THE FLORIDA LAWYER STANDARDS AND RELEVANT CASE LAW.

The Florida Bar contends that the referee's recommendation of a 90-day suspension is not reasonable under the Florida Standards for Imposing Lawyer Sanctions and the relevant case law. The Florida Bar v. Temmer, 753 So.2d 555, 558 (Fla. 1999). The referee's report is replete with findings of fact that warrant a higher discipline of a three-year rehabilitative suspension rather than the 90-day nonrehabilitative suspension recommended by the referee. The Court's scope of review as to the referee's recommended discipline is broader than that afforded to the referee's findings of fact because it is the final arbiter of the appropriate disciplinary sanction. The Florida Bar v. Miller, 863 so. 2d 231, 234 (Fla. 2003). The Court will not second-guess a referee's recommended discipline as long as there is a reasonable basis in the case law and it comports with the Florida Standards for Imposing Lawyer Sanctions. Even given the mitigation evidence presented by Respondent and considered by the referee, the Florida Standards for Imposing Lawyer Sanctions and

the case law support The Florida Bar's contention that a three-year rehabilitative suspension is an appropriate disciplinary sanction.

The referee found that Respondent "recorded the fraudulent Lease Agreement and Agreement for Sale in the Walton County Clerk's Office on December 12, 2002, which had an added typed paragraph stating the parties shall thereafter 'negotiate a time for the conveyance of the property' to Hall and adding the words an Agreement for Sale to the first page of the document." ROR-5. The referee found that Respondent changed the title of the document from Lease to Lease and Agreement for Sale and added additional language to the lease. ROR-7 See also TFB Exhibits-1, 2, and 3.

In her rationale to support her finding Respondent in violation of Rule 4-8.4(c), the referee determined that a fraud was committed when the name of the document was changed and the language was changed from the original document. ROR-9. The referee noted that Respondent "admitted that she deliberately and intentionally changed the title of the document and that she intentionally changed the language from the handwritten addendum to the printed language. [Emphasis added] ROR-8. The referee found that this change in the language made "a substantial change in the content of the document and Hall did this for her own benefit." [Emphasis added] ROR-8. Respondent testified that she had prepared the forged document on her home

computer, that she did 90-95% of her work at home, and she had no regular office staff to assist her. ROR-8. Based on this testimony, the Referee found Respondent's testimony "incredulous" when she denied intentionally signing the forged document which contained her genuine signature and tried to blame an unnamed office assistant for forging the three signatures on the fraudulent lease agreement. ROR-8. The Florida Bar contends that the above findings of fact by the referee warrant a higher discipline than a nonerehabilitative 90-day suspension under the Florida Standards Imposing Lawyer Sanctions and the prevailing case law.

It is a well established maxim that a disciplinary sanction must serve three purposes:

> First, the judgment must be fair to society, both in terms of protecting the public from unethical conduct and at the same time not denying the public the services of a qualified lawyer as a result of undue harshness in imposing the penalty. Second, the judgment must be fair to the respondent, being sufficient to punish a breach of ethics and at the same time encourage reformation and rehabilitation. Third, the judgment must be severe enough to deter others who might be prone or tempted to become involved in like violations. The Florida Bar v. Brake, 767 So.2d 1163, 1169 (Fla. 2000). See also, The Florida Bar v. Lord, 433 So.2d 983, 986 (Fla. 1983); The Florida Bar v. Pahules, 233 So.2d 130, 132 (Fla. 1970).

The referee's recommendation of a 90-day suspension is not fair to society, is not sufficient to punish the breach of ethics, and would not serve to deter others from being involved in similar misconduct.

On the other hand, a three-year suspension does meet the threefold purposes of a disciplinary sanction. First, it would protect the public and is not unduly harsh under the findings of fact and circumstances of this case. Second, it is fair to the Respondent because it punishes a serious breach of ethics while encouraging rehabilitation. Lastly, a three-year suspension is severe enough to deter others from a similar violation of the ethical rules.

In this case, Respondent intentionally and fraudulently altered a legal document and knowing it was a fraudulent document, recorded it with the Walton County Clerk's Office. Respondent deliberately and intentionally tried to obtain the Godwins' property by insisting to the Godwins and third parties that she had a legal right to purchase the property when she knew, or should have known as an attorney, that the intent of the parties was to enter into an option to purchase. While there is no direct proof that Respondent forged the signatures on the document, the Referee found that Respondent composed the document on her home computer and her signature on the fraudulent agreement was genuine while all the other signatures were forged. The

referee found that the fraudulent Lease Agreement and Agreement for Sale was prepared by a computer with a changed title and a changed addendum and three forged signatures. ROR-7 No one else had the motive or opportunity to forge the Godwins' and Joseph Grant's signatures on the fraudulent Lease Agreement and Agreement for Sale, but Respondent who would benefit personally from the fraudulent conveyance.

This Court has generally imposed a penalty of disbarment on attorneys who engage in fraud, misrepresentation and deceit. In The Florida Bar v. Massari, 832 So.2d 701(Fla.2002), an attorney presented a forged "Satisfaction and Release of Lien", purportedly signed by his client to a title insurance company and received a $30,000 check payable to the client's corporation. Although the attorney was not a payee, he endorsed the check and used the money for his own personal benefit. Several months later, after the client discovered the deception, the attorney replaced the money in his client's trust account and took the fees to which he was entitled. His client reluctantly signed a letter to the police department stating that he did not wish to bring criminal charges against the attorney.

When a disciplinary investigation arose, the attorney produced a forged document allegedly signed by his client stating that his client had agreed to the attorney's receipt, use, and possession of his trust funds. Although no direct proof was

presented as to who forged the document, the referee found that the attorney was "the only person who had motive and reason for transposing the signatures" and the transposition of the signatures on the escrow document was "evidence of a deliberate and knowing act to deceive." Id. at 703. The Court upheld the referee's findings and disbarred the attorney, who had no prior disciplinary record, for misappropriation of client trust funds and for compounding the problem by lying about it. See The Florida Bar v. Gold, 203 So.2d 324(Fla. 1967)(attorney disbarred for forging names to satisfaction of mortgage, witnessed and caused another to witness forgery, and recorded the forged document in county clerk's office). See also, The Florida Bar v. Forbes, 596 So.2d 1051(Fla. 1992)(attorney convicted of bank fraud and disbarred for knowingly and willfully making a false statement in bank documents to obtain loan); The Florida Bar v. Kickliter, 559 So.2d 1123 (Fla. 1990)(attorney disbarred for conviction involving forging client's signature on will and submitting it to court); The Florida Bar v. Zinzell, 387 So.2d 346(Fla. 1980)(attorney tricked client into signing trust agreement conveying property to him for his own benefit).

The Court has imposed lesser disciplines than disbarment in other cases involving forgery. For example, in The Florida Bar v. Klausner, 721 So.2d 720(Fla. 1998), a three-year suspension was imposed where an attorney presented forged

documents to a court to avoid abatement in ten cases, and when confronted with the forged documents intentionally lied under oath and to the court. The attorney pled to three felonies and was criminally sanctioned, yet the Court upheld the three-year suspension because the referee's recommendation was reasonably supported by the case law which the referee thoroughly researched and considered, and the mitigating factors of young age, inexperience, and no prior discipline.

In this case, the referee made findings, and Respondent in fact admitted at hearing, that she deliberately and intentionally changed the title of the document and that she intentionally changed the language from the handwritten addendum to the printed language. ROR-8 The referee also found that this change in the language made "a substantial change in the content of the document and Hall did this for her own benefit." Under the Florida Standards for Imposing Lawyer Sanctions, deliberate and intentional misconduct generally merits disbarment.

Standard 7.1 states: "Disbarment is appropriate when a lawyer intentionally engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system." [Emphasis added]. Bar counsel argued at the final penalty hearing that disbarment was appropriate under Standard 7.1

and Standard 5.11(f). The referee chose, however, to apply Standard 7.2 that states that suspension is appropriate when a lawyer knowingly engages in such conduct. Even if suspension is appropriate, the referee's findings and Respondent's admissions that she knowingly, deliberately and intentionally changed the title and language of a legal document and then intentionally recorded that fraudulent document with the county clerk's office warrants a higher suspension than 90-days with automatic reinstatement.

In The Florida Bar v. Baker, 810 So.2d 876(Fla. 2002), the attorney forged his wife's name on documents relating to the sale of a home in the course of a dissolution action. The court imposed a 91-day rehabilitative suspension although it found no prior disciplinary history, and distinguished the case by finding that there was no personal benefit to the attorney because the home was in foreclosure and the sale proceeds were used to pay off marital debts. In this case, however, the referee specifically found that Respondent had deliberately and intentionally changed the title of the Lease Agreement to Lease Agreement and Agreement for Sale. In addition, she found that Respondent intentionally changed the handwritten language of negotiating an agreement to purchase to the printed language of negotiating a time for conveyance of the property. The referee specifically found that Respondent made this "substantial

change to the content of the document….for her own benefit." [Emphasis added] ROR-4-5, 8.

The referee considered the mitigation of no prior disciplinary history and a good reputation in the community. ROR-9. Some of the witnesses presented at the final penalty hearing, however, were unaware of all the facts of the disciplinary case and only knew what Respondent told them, namely, that she was accused of having been involved in a fraudulent real estate transaction. They had minimal knowledge of the facts and the charges brought in this disciplinary case. TPH-43, 49, 52-53.

This Court should impose a three-year rehabilitative suspension as an appropriate discipline because it serves the three-fold purposes of discipline, and comports with the Florida Standards for Imposing Lawyer Sanctions as well as the relevant case law. In addition, it is a lesser discipline than disbarment that has been imposed in similar cases, and yet takes into account the mitigating factors found by the referee.

CONCLUSION

For the foregoing reasons, The Florida Bar would respectfully request that the Court approve and adopt the Report of Referee as to the findings of fact, but reject the referee's disciplinary recommendation of a 90-day suspension, and impose a three-year suspension because it has a reasonable basis in the Florida Lawyer Standards Imposing Sanctions and the relevant case law.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Initial Brief regarding Supreme Court Case No. SC07-863, TFB File No. 2004-01,364(1B), has been mailed by regular U.S. mail to Respondent's counsel, Lois B. Lepp, whose record Bar address is 902 E. Gadsden Street, Pensacola, Florida 32501-4074, on this 9th day of April, 2009.

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Copy provided to:
Kenneth Lawrence Marvin, Staff Counsel

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

Undersigned counsel does hereby certify that the Initial Brief is submitted in 14 point proportionately spaced Times New Roman font, and that the brief has been filed by e-mail in accord with the Court's order of October 1, 2004. Undersigned counsel does hereby further certify that the electronically filed version of this brief has been scanned and found to be free of viruses, by Symantec AntiVirus.

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Olivia Paiva Klein, Bar Counsel