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 REPLY BRIEF

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ISSUE I

THE COURT SHOULD IMPOSE A THREE-YEAR SUSPENSION AS AN APPROPRIATE DISCIPLINE BECAUSE RESPONDENT ENGAGED IN ONGOING, CONTINUOUS MISREPRESENTATIONS FOR OVER FIVE YEARS IN VIOLATION OF RULE 4-8.4(c)

Respondent represents throughout her Answer Brief that her misconduct consisted of "one rule violation (Rule 4-8.4(c)) for a single incident (altering one agreement), related to personal conduct unconnected to the practice of law." Answer Brief at p. 7, 8, 12, 19, 30, 31. Respondent's misconduct, however, was not one isolated incident of fraudulently changing the title and language in a written legal agreement. It was a series of ongoing, continuous misrepresentations to various parties for over five years resulting in multiple violations of Rule 4-8.4(c). From the time the Lease Agreement was signed by Irving and Clara Godwin ("Godwins"), Respondent, and Joseph Grant on January 31, 2001, until August 21, 2006, when Respondent was required to quit claim the Godwins' property back to them pursuant to the Deferred Prosecution Agreement ("DPA"), Respondent continued to misrepresent to the Godwins, the public at large, Terry Pilcher, the Godwins' real estate agent, and James Foster, the Godwins' attorney,

that she had a verifiable agreement to purchase the Godwins' property. See TFB Exhibits-4, 5, 6, 7, 9, 10, 11, 12, and 13.

The referee found, and Respondent admitted, that she had **deliberately** and **intentionally** changed the title of the document and **intentionally** changed language from the handwritten addendum to the printed language, and she did this **for her own benefit**. [Emphasis added] ROR-8. The referee found further that Respondent **recorded** the fraudulent Lease Agreement and Agreement for Sale in the Walton County Clerk's Office on December 12, 2002.[1] [Emphasis added] ROR-5. See also TFB Exhibit-4. As a lawyer, Respondent knew, or should have known, that the recording of such an instrument in the Clerk's Office was a felony, i.e., uttering a forged document, for which she was later criminally charged. As a lawyer, she knew, or should have known, that the recording of this document in the Clerk's Office would misrepresent to the public at large that she had a right to purchase the Godwins' property, and would prohibit the Godwins from selling or transferring the property to anyone else.

Respondent failed to inform the Godwins or their attorney, Mr. Foster, of the recorded document until February 21, 2003. See TFB Exhibit-12. In a letter to

1 While the Referee's report states December 12, 2002, TFB Exhibit-3 indicates that the correct recording date was December 9, 2002.

Respondent from the Godwins' attorney, Mr. Foster, dated June 11, 2003, he requested that she execute a quit claim deed to remove the cloud from the Godwins' title and return it to his office within two weeks. See TFB Exhibit-13. Respondent did not comply with his request.

Over two years later when the criminal investigation was initiated, Respondent executed a Release on September 27, 2005, but that Release merely stated that she released all rights to purchase the Godwins' property under the fraudulent Lease Agreement and Agreement for Sale. See TFB Exhibit-14. After Respondent was criminally charged with forgery and uttering a forged instrument, she was required to sign a quit claim deed as part of her DPA. TPH-61, R Exhibit-8. She finally complied with Mr. Foster's request to execute a quit claim deed on August 10, 2006, over three years after his initial request and only as part of her criminal DPA. During this period of time, the public at large would be misled by the fraudulent recording in the Walton County Clerk's Office, and the official recording lent credence to her misrepresentations.

After the signing of the Lease Agreement, Respondent continued to contact Mrs. Godwin about a price for the property. When the Godwins refused to accept Respondent's offers, Respondent began to misrepresent to Mrs. Godwin that the original Lease Agreement was an agreement to sell the property to Respondent.

See TFB Exhibit-1. Mrs. Godwin maintained that she was not required to sell her the property under the Lease Agreement based on advice of counsel. TFH-225, 230-231, Vol. I.

Respondent continued to harass Mrs. Godwin about selling her property. Cindy Godwin testified that, in June 2002, Respondent came to the Godwins' home and stated again that she had an agreement to buy their property and wanted to discuss it with Mrs. Godwin. Cindy Godwin advised Respondent that Mr. Foster was their attorney and her mother was not to have any conversations with Respondent about the sale of the property. TFH-300-301, Vol II.

Several hours later, however, after being informed that the Godwins were represented by counsel, Respondent called their home and asked to speak with Mrs. Godwin. Cindy Godwin answered the telephone and advised Respondent again that she needed to talk to their lawyer. TFH-301, Vol. II. At that time, Cindy Godwin testified that Respondent threatened to sue the Godwins and tie them up in court, insinuating that they could lose their property from protracted litigation, and insisting that the Godwins had to sell the property to her. TFH-301-302, Vol. II. When Respondent again began making offers for the Godwins' property, Cindy Godwin testified that she told her to contact their lawyer, Mr. Foster, or their real estate agent, Terry Pilcher. TFH-302, 305, Vol. II. Under

aggravating factors, the referee found it "troubling" 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.[2] ROR-10.

When Mrs. Godwin decided to sell her property in May 2002, she hired Mr. Pilcher, to list the property. TFB Exhibit-21. Mr. Pilcher put on the real estate listing agreement that the sale was subject to a lease agreement. TFH-392-396, Vol. II; see also, TFB Exhibit-22. Respondent, however, wrote a letter to Mr. Pilcher dated June 19, 2002, misrepresenting to him that she had a contract with the Godwins to purchase their property. TFB Exhibit-6. Mr. Pilcher also testified at the final hearing that Respondent had represented to him on the telephone that the Lease Agreement was an agreement to purchase the Godwins' property, and that he could not sell the property. TFH-402, Vol. II. Further, he testified that Respondent threatened to turn him in to the real estate commission and have his license pulled if he sold the Godwins' property. TFH-403, Vol. II. Mr. Pilcher was informed by his realty agency to withdraw the real estate listing of the Godwins'

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2 After the fact finding hearing, in her oral pronouncement from the bench, the referee stated that Respondent had "violated the rules of the Bar by harassing lots of people, writing these voluminous letters talking about how she was—she was somehow being harmed by Mr. and Mrs. Godwin." The referee specifically referred to the incident that Cindy Godwin testified to stating that "after she was told to cease and desist and to leave them alone. She called back and asked for

property on June 21, 2002. TFH-407, Vol. II.

Respondent misrepresented to the Godwins' attorney that she had a contract to purchase the property. TFB Exhibits-9 and 10. Mr. Foster wrote to Respondent on January 20, 2003, and advised her that the Godwins had no obligation under the Lease Agreement to sell her the property. TFB Exhibit-11. On February 21, 2003, Respondent wrote to Mr. Foster and again misrepresented that the Godwins had agreed to sell her the property. She included for the first time a copy of the fraudulent Lease Agreement and Agreement for Sale that she had previously recorded on December 9, 2002, at the Walton County Clerk's Office, referring to it as the "typewritten agreement" that she had with his clients. TFB Exhibit-12. The referee found as an aggravating factor that Respondent did not notify anyone of the changed terms until February 2003 and continued to insist that she had an agreement to purchase property, not merely an option to purchase. ROR-10.

Respondent engaged in misrepresentation to the above parties continuing to maintain that she had a legal right to purchase the Godwins' property. These continual, ongoing misrepresentations resulted in numerous violations of Rule 4-8.4(c). Respondent would have the Court believe that her misconduct was an isolated incident, and aberration in an otherwise unblemished career. To support

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Mrs. Godwin. That is harassment." TFH-470, Vol. II.

this position, Respondent cites to cases where the attorneys received a lesser discipline because the misconduct related to one act of misconduct, or where the Court imposed a lesser discipline even though there were more rule violations. Although the Referee found one rule violation, there were many separate instances of misrepresentation to various parties that occurred over a five-year period of time.

Respondent's misrepresentations caused the Godwins to lose two buyers for their property, to hire an attorney to defend them against Respondent's continued harassment, and to have their real estate listing withdrawn by the real estate agency. Whether Respondent was acting in a formal attorney-client relationship or not, she was still an attorney in The Florida Bar and bound by its ethical rules. Deliberately and intentionally creating, and then recording a fraudulent legal document, continuously maintaining a fraudulent legal position for almost five years to the public at large and numerous individuals resulted in ongoing, separate violations of the misrepresentation rule. Respondent's mitigation evidence considered by the referee is not sufficient to overcome Respondent's deliberate, intentional and repetitive misconduct.

Respondent states that there was no finding that she forged any signatures on the Lease Agreement and Agreement for Sale, and there was no clear evidence of

who placed the signatures of the other parties on the agreement. Answer Brief at p. 10. Nevertheless, the referee did find that the three forensic document examiners concluded that the signatures of Mr. and Mrs. Godwin and the witness, Joseph Grant, were forged and Respondent's signature on the same document was genuine. ROR-5-6. The referee considered Respondent's explanation of how her genuine signature got on the document when the other three signatures were forged as **incredulous**. [Emphasis added] ROR-8.

As the referee pointed out, there was no benefit for office staff to have forged the signatures. ROR-8. Further, Respondent testified that she did 90-95% of her work on a computer at home. She did not have a regular assistant to do clerical work for her, she had prepared this agreement on her home computer, and she did not keep a file in the office. ROR-8. The referee concluded that while there was no proof that Respondent actually forged the other three signatures, the fact that her signature was genuine and the others were forged was "a factor to be considered." ROR-9.

Respondent admitted that she changed the title on the forged document, and that she inserted the language on page 2 of the forged document. She admitted that she had prepared this document on her home computer. She had possession of the document at her home office. The referee also noted that, on the original, forged

document presented as TFB Exhibit-3, it is evident that all four signatures were executed with the **same pen**, including Respondent's signature.[3] [Emphasis added] TFH-469, Vol. II. Although there was no clear and convincing proof that Respondent had done it, the facts indicate that Respondent was the only one who had the opportunity and motive to forge the signatures on the questioned document.

ISSUE II

RESPONDENT CANNOT CHALLENGE THE REFEREE'S FINDINGS WHEN NO TIMELY PETITION FOR REVIEW WAS FILED

Respondent cannot now challenge the findings of the referee based on Standard 7.2, claiming error, when no cross petition challenging any part of the referee's report was previously submitted to the court. Answer Brief at pp. 13-18; see also Rule 3-7.7(a)(1) and Rule 3-7.7(c)(1). Standard 7.0 is entitled "Violations of Duties Owed as a Professional" and the first paragraph states that "the following sanctions are *generally appropriate*" in certain types of cases. [Italics added]. There is no language making these categories exclusive of any other type of professional misconduct. The referee found deliberate and intentional conduct to

3 The Florida Bar's expert witness, William J. Bodziak, stated in his deposition that, in his experience, having 3 forged signatures on one document and 1 signature

which Standard 7.1 would be more applicable, but she applied only Standard 7.2 in her report reducing her recommendation to a suspension. She considered but did not accept both parties' recommendations as to the applicability of Standard 5.1. Since Respondent has failed to timely file a cross petition for review, she cannot now raise an objection to that part of the referee's report in her Answer Brief.

ISSUE III

NO CASES CITED BY EITHER PARTY ARE ON POINT

On best information and belief, there are no cases cited by The Florida Bar or Respondent that are directly on point with the facts of this case. Both parties have analogized to cases that have similar facts and rule violations involving misrepresentation, fraud and deceit. Respondent's bare assertion that the referee considered a three-year suspension has no support in the record. Answer Brief at p. 20. The Florida Bar recommended disbarment and Respondent's counsel recommended a public reprimand. The referee did not accept either recommendation but chose instead a 90-day suspension based on Standard 7.2. No cases were cited by the referee in her report to support her decision. Therefore, neither party can definitely state what cases were relied on by the referee in reaching her determination as to an appropriate disciplinary sanction.

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normally written is suspicious. TFB Exhibit-20 at pp. 25-26.

ISSUE IV

A THREE-YEAR SUSPENSION MEETS THE PAHULES CRITERIA

Under the criteria of The Florida Bar v. Pahules, 233 So. 2d 130 (Fla. 1970) and its progeny, the disciplinary sanction must be fair to society, fair to the Respondent, and be severe enough to deter others from similar conduct. The 90-day suspension recommended by the referee would allow Respondent to immediately return to the practice of law after a 90-day hiatus from her legal practice. Respondent's misrepresentations affected the public at large by the recording of a false document with the Clerk's Office. Her misrepresentations were broadcast to everyone to whom she talked and wrote representing that she had an agreement for the purchase of the Godwins' property when, as an attorney, she knew it was only a lease agreement. A three-year suspension would be fair to society because it would protect the public while at the same time not permanently deprive the public of a qualified attorney. This sanction would be fair to Respondent because it would allow her to apply for reinstatement and encourage her to reform her ways. It would deter other lawyers because the sanction is a substantial suspension requiring a petition for reinstatement.

More importantly, violations of Rule 4-8.4(c) go to the heart of the integrity

and trustworthiness of the legal profession. The question arises: how can one ever trust a lawyer who, in a personal transaction, would go to these lengths to misrepresent to the public and numerous individuals that she had a legal right to purchase property; a lawyer who created and recorded a document that she knew was fraudulent; a lawyer who had the opportunity and motive to forge the signatures on the fraudulent document. A 90-day suspension sends a message to the public that this type of conduct is not a serious violation of the ethical rules. It is not significant enough to deter other lawyers from engaging in similar misconduct. A three-year suspension would not permanently remove Respondent from the profession but would punish a serious breach of ethics and would be a substantial deterrent to other attorneys that might contemplate similar actions.

CONCLUSION

In conclusion, The Florida Bar respectfully submits that the referee made findings stating that Respondent engaged in deliberate and intentional conduct in violation of the Rules Regulating the Florida Bar. While a disbarment recommendation can be reduced to a suspension, it should not be reduced to a nonrehabilitative suspension of 90 days. Rather, the Court should impose a rehabilitative suspension of three years to serve the purposes of the Pahules criteria, and the Florida Standards Imposing Lawyer Sanctions, as well as to comport with the relevant case law.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Reply 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 19th day of June, 2009.

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

Undersigned counsel does hereby certify that the Reply 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