

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR

Complainant,

vs.

LEONARDO ROTH and
MARK ROUSSO

Respondent.
_____ /

Supreme Court Case
No.: SC11-15 and SC11-16

The Florida Bar File No.
2011-70,408(11A)
2011-70,598(11A)

**RESPONDENTS, LEONARDO ROTH AND MARK ROUSSO'S,
CROSS-REPLY BRIEF**

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The Florida Bar v. Committe, 916 So.2d 741 (Fla. 2005)

REPLY ARGUMENT

IV. THE REFEREE ERRED IN FINDING THAT RESPONDENTS VIOLATED RULE 4-8.4(c) BASED UPON CONDUCT NEVER CHARGED BY THE BAR

The Bar seeks cover behind *The Florida Bar v. Committee*, 916 So.2d 741 (Fla. 2005), which it argues holds that it is not required to connect every alleged item of misconduct to a specific Rule violation. In so doing, the Bar misconstrues Respondents' argument. Respondents are not arguing that the Bar failed to tie specific allegations to specific rules. Rather, they argue that the Bar never made the allegations in the first place and yet the Referee found them guilty of a fact pattern that was never alleged. To use the words of Rule 3-7.6(h)(1)(b), the Bar has not, "set forth the particular act or acts of conduct for which the attorney is sought to be disciplined" with respect to the Rule 4-8.4(c) violations as found by the Referee.

It is self evident that Rule 4-8.4 was pleaded by the Bar to support a violation based upon express allegations of misappropriation, of which Respondents were found not guilty. The Bar pleaded no facts that Respondents deceived their own clients by not disclosing the problems with their trust account or that Roth mislead Mr. Yordi, as found by the Referee. There is a stark

difference between upholding a finding of guilt where the Bar made allegations sufficient to support a violation of some Rule – even if the link is not directly made in the complaint (*Committe*) – and upholding a finding of guilt on a fact pattern that was never, ever alleged by the Bar. The latter is impermissible and the problem here.

If the findings of guilt of Rule 4-8.4(c) are affirmed based upon the reasons given by the Referee, there is little need for the Bar to plead any facts in any future complaint. The trial will be a “free for all” and respondents will only be on notice that they should be ready for anything. That is the antithesis of due process.

In sum, finding Respondents guilty of violations of Rule 4-8.4(c) based upon facts never pleaded by the Bar is a classic violation of due process.

CONCLUSION

The Report of Referee should be approved except for the 4-8.4(c) findings of misconduct. In addition, the Referee’s recommendation that reinstatement be conditioned upon full repayment of the Yordi loan should be modified to permit reinstatement so long as Respondents are performing in accordance with the settlement agreement with Mr. Yordi.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed this _____ day of November, 2011 to: Daniela Rosetta, Bar Counsel, The Florida Bar, Rivergate Plaza - Suite M - 100, 444 Brickell Avenue, Miami, Florida 33131-2404, Kenneth Marvin, Staff Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399 and John F. Harkness, Jr., Executive Director - The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300.

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