

IN THE SUPREME COURT OF FLORIDA  
CASE NO.: SC18-149

THE FLORIDA BAR,  
Petitioner,

L.T. Case Nos.: 20174035(11B)  
and 20174045(11B)

vs.  
TIKD SERVICES LLC, A Foreign  
Limited Liability Company,

and

CHRISTOPHER RILEY,  
individually and as Founder of,  
TIKD SERVICES LLC,  
Respondents.

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**ERWIN ROSENBERG'S MOTION FOR THIS COURT TO DETERMINE  
WHETHER THE SETTLEMENT AGREEMENT BETWEEN THE PARTIES IS  
VOID PURSUANT TO FEDERAL ANTITRUST LAW**

I have filed a motion for leave to file an amicus brief dealing with federal antitrust law in support of Respondent. One factor to be considered as to whether my motion should be granted is whether it is needed by this Court. On January 13, 2020 I received a copy of the settlement agreement between the parties in the related federal court case. See Exhibit "A" and "B" to my January 29, 2020 motion for this Court to determine whether the settlement agreement between the parties prevents Respondents from adequately making federal antitrust arguments in this case. If Respondent TIKD SERVICES LLC with the support of the U.S. Department of Justice Antitrust Division (which, as I mentioned in my motion for leave to file an amicus brief, filed a Statement of Interest indicating that I was right and The Florida Bar was wrong on the issue of whether the Florida Bar is required to comply with State Bd. of Dental Examiners v. FTC, 135 S. Ct. 1101 (2015)("Dental Examiners")) would continue to litigate that The Florida Bar is

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required to comply with *Dental Examiners*) then this Court would have less of a need for my amicus brief. The U.S. government's Statement of Interest shows that it is important for competition in the market that the law be clarified that Bars are required to comply with *Dental Examiners*. The settlement of the parties in the related federal case did not have the U.S. government as a signatory nor did it include a requirement that The Florida Bar accepts that The Florida Bar is required to comply with *Dental Examiners*. The settlement agreement contained a confidentiality clause in paragraph 5, an indemnity clause in paragraph 7, and in paragraph 1(B) required the dismissal of the federal antitrust appeal. It thus impaired the U.S. Department of Justice Antitrust Division's ability to enforce federal antitrust law and my opportunities in the legal services market since the U.S. Department of Justice Antitrust Division's fight could have caused a federal court or this Court to vacate this Court's suspension and disbarments against me. Furthermore, the settlement agreement contains an implication that TIKD and Riley may not advance federal antitrust law arguments in this case:

This release also does not preclude, prevent, impede, limit or foreclose the ability of TIKD, Riley and/or Garvy to advance any position, argument or defense in connection with the proceedings or claims against the TIKD Releasees **under the Rules Regulating the Florida Bar or any other Florida law**, including but not limited to the proceeding pending between TFB and any TIKD Releasees in the Florida Supreme Court relating to the unlicensed practice of law.

(Settlement Agreement page 3, second paragraph in section 4)(emphasis added).

The Florida Bar may argue that in the settlement agreement "Florida law" does not include federal antitrust law since the settlement agreement elsewhere specifies federal antitrust law. See Recitals 2 where it says that the "Antitrust Action" included claims

under the Federal Sherman Act and Florida's Antitrust Act. (Settlement Agreement page 1). The first paragraph of section 4 contains a release "arising from the facts, circumstances or legal theories alleged in the Antitrust Action." (Settlement Agreement page 3). Even if the implication were ambiguous, the settlement agreement explicitly says in paragraph 9 that there is no construction that an ambiguity is interpreted against the drafter. As such, if Respondents were to raise federal antitrust arguments in this case they may be faced with a suit for breach of the settlement agreement and/or a suit for indemnification.

Federal antitrust law prohibits unreasonable restraints on competition. The settlement agreement's restriction on TIKD and Riley's continued cooperation with the U.S. Department of Justice Antitrust Division by causing the dismissal of the federal appeals court case and imposing a confidentiality clause, an indemnity clause and an apparent restriction on raising federal antitrust law arguments in this proceeding imposes The Florida Bar's views of the costs and benefits of competition on the entire marketplace and this violates the Sherman Act. See National Soc. of Professional Engineers v. United States, 435 US 679, 694-695 (1978)(footnote omitted):

The Sherman Act does not require competitive bidding;[21] it prohibits unreasonable restraints on competition. Petitioner's ban on competitive bidding prevents all customers from making price comparisons in the initial selection of an engineer, and imposes the Society's views of the costs and benefits of competition on the entire marketplace. It is this restraint that must be justified under the Rule of Reason, and petitioner's attempt to do so on the basis of the potential threat that competition poses to the public safety and the ethics of its profession is nothing less than a frontal assault on the basic policy of the Sherman Act.

The Sherman Act reflects a legislative judgment that ultimately competition will produce not only lower prices, but also better goods and services. "The heart of

our national economic policy long has been faith in the value of competition." *Standard Oil Co. v. FTC*, 340 U. S. 231, 248. The assumption that competition is the best method of allocating resources in a free market recognizes that all elements of a bargain— quality, service, safety, and durability—and not just the immediate cost, are favorably affected by the free opportunity to select among alternative offers. Even assuming occasional exceptions to the presumed consequences of competition, the statutory policy precludes inquiry into the question whether competition is good or bad.

Before this Court rules on my motion for leave to file an amicus brief this Court should review the federal antitrust settlement executed by the parties and determine whether it is void pursuant to federal antitrust law. Wherefore I move for this Court to determine whether the settlement agreement between the parties is void pursuant to federal antitrust law.

CERTIFICATE OF SERVICE

I hereby certify that on January 31, 2020 I served a copy hereof on all registered persons via Portal Filing.

Respectfully,

/s./ Erwin Rosenberg  
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