

IN THE SUPREME COURT
OF THE STATE OF FLORIDA

Supreme Court Case No. SC20-1027
The Florida Bar No. 2019-70,706(11E)

THE FLORIDA BAR,

Petitioner/Appellant,
vs.

ALAN HOWARD RAMER,

Respondent/Appellee/
Cross-Appellant.

APPENDIX

ALAN H. RAMER'S ANSWER & CROSS APPEAL BRIEF

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APPENDIX A

REFEREE'S INDEX OF RECORD
February 18, 2021

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

ALAN HOWARD RAMER,

Respondent.

Supreme Court Case
No. SC20-1027

The Florida Bar File
No. 2019-70,706 (11E)

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APPENDIX B

RESPONDENT'S EXHIBIT LIST
December 2, 2020

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Supreme Court Case No. SC20-1027

Complainant,

The Florida Bar File No. 2019-70,706(11E)

vs.

ALAN HOWARD RAMER,

Respondent.

_____ /

RESPONDENT'S EXHIBIT LIST

COMES NOW Respondent, ALAN HOWARD RAMER, by and through undersigned counsel, and files this Exhibit List as follows:

A. Correspondence between The Florida Bar and Respondent prior to filing of Formal Complaint on July 16, 2020:

1. Email with letter and enclosures of August 5, 2019 from The Florida Bar (Tonya Avery, Bar Counsel) to Respondent.

2. Response Letter from Respondent dated August 19, 2019 with enclosures.

3. Email from Tonya Avery of June 10, 2020.

4. Email from Respondent of June 11, 2020.

5. Email from Tonya Avery of June 12, 2020.

B. Judge Altonaga's Order of February 10, 2017 (Document 182) with a Footnote 3 referral to the Ad Hoc Committee.

C. Transcript of Ad Hoc Committee of March 13, 2018 and all documents filed or referred to in opposition to Ad Hoc Committee report.

D. Report and Recommendation of the Ad Hoc Committee dated April 12, 2018. [A second Report of the Ad Hoc Committee dated May 1, 2020 has still not been located.]

E. Letter of June 13, 2018 from Respondent to Judge Michael Moore.

F. Response to Order to Show Cause by Respondent to Judge Michael Moore.

G. Order of Judge Michael Moore of May 24, 2019.

H. The Docket in the underlying civil case, *Coach, Inc. v. Chung Mei Wholesale, et al*, United States District Court Southern District of Florida Case No. 15-cv-22829-Altonaga/Sullivan. [Filings which are Exhibits below are identified by the Document Number assigned in this civil case.]

I. At issue filings and Orders in underlying civil case directed at Respondent's clients (and not Respondent's) for the clients' failures associated with discovery requests:

1. Plaintiff Coach's Motion to Compel (Document 32) filed December 29, 2015.

2. Agreed Order Granting Plaintiff's Motion to Compel (Document

36) entered January 26, 2016.

3. Defendant's Notice of Compliance with Agreed Order (Document 38) filed February 6, 2019.

4. Magistrate's Order (Document 41) entered March 15, 2016 awarding sanctions of \$500.00 against Defendants (and NOT Respondent).

5. Magistrate's Order (Document 43) entered March 22, 2016 awarding sanctions of \$500.00 against Defendants (and NOT Respondent).

J. At issue filings in civil case dealing with Mediation mis-calendared by Respondent.

1. Order Scheduling Mediation (Document 23) entered October 16, 2015 for Mediation on April 4, 2016 with a Mediation deadline of April 11, 2016.

2. Mediation Report (Document 46) filed April 8, 2016 ("Defendants and Defendants' counsel failed to appear").

3. Plaintiff Coach's Motion for Sanctions (Document 45) filed April 28, 2016 (against Defendants which Respondent paid).

4. Defendants' Response to Plaintiffs Motion for Sanctions (Document 57) filed April 19, 2016.

5. Order (Document 63) entered May 9, 2016.

6. Plaintiff's Notice of Scheduling Mediation (Document 65) entered

May 12, 2016 for Mediation on June 14, 2016 "...Plaintiffs' corporate representative will appear telephonically").

7. Mediation Report (Document 76) filed June 24, 2016 ("No agreement was reached").

K. At issue filings in civil case dealing with failure to follow Local Rule 56.1 on proper paragraphing of a response to motion for summary judgment (the Plaintiff Coach's motion has not been filed but is available on request):

1. Defendants' Response to Plaintiffs' Motion for Partial Summary Judgment (Document 67) filed May 16, 2016.

2. Order (Document 69) entered May 18, 2016 requiring compliance with Local Rule 56.1 by May 23, 2016.

3. Defendants' Response to Plaintiffs' Motion for Partial Summary Judgment (Document 70) re-filed May 23, 2016.

4. Defendants' Statement of Material Facts (Document 71) filed May 23, 2016.

5. Order (Document 75) entered June 17, 2016 denying Plaintiff's Motion for Summary Judgment.

L. At issue filings in civil case dealing with motions to which Respondent allegedly did not respond because the relief requested was not

contested:

Permanent Injunction

1. (Post-trial) Plaintiff Coach's Motion for Entry of Permanent Injunction (Document 125) filed August 24, 2016 (which Defendants' did not oppose at a pre-trial hearing).

2. Order (Document 129) entered September 13, 2016 requiring a response "failing which the Court may grant the motion by default."

3. Order (Document 130) entered September 18, 2016 granting permanent injunction.

4. Excerpt from of Judge Altonaga's Order of February 10, 2017 (Document 182) (see Exhibit B herein) which rebuked Coach's claim of fees in obtaining a permanent injunction after the jury trial. Judge Altonaga, at a pretrial hearing, noted at Page 7 of her Order, that "Defendants stated, and Plaintiff's acknowledged, Defendants' counsel offered a consent decree for an injunction before the answer was filed."

Show Cause

5. Plaintiffs' Motion to Show Cause Why Default Should Not Be Entered (Document 79) filed July 13, 2016.

6. Order (Document 81) entered July 18, 2016, requiring response by July 20, 2016 "failing which the Court shall consider the Motion in the

absence of any response.”

7. Defendants’ Good Cause Showing Why Default Should Not Be Entered (Document 89) filed July 20, 2020.

8. Order (Document 97) entered July 27, 2016 denying the “Show Cause Motion.”

M. Other civil filings:

1. Verdict (Document 121) filed August 10, 2016.

2. Final Judgment (Document 122) filed August 10, 2016.

N. Affidavit of Dick Lee, Esquire filed in this case October 14, 2020.

O. Florida’s Standard for Imposing Lawyer Sanctions filed this date including all standards and cases cited therein addressing conduct which supports a suspension of any time period.

P. Local Rule 6 of United States District of Court Southern District of Florida Local Rules.

Q. 1. Case Law:

The Florida Bar v. McCain, 361 So. 2d 700 (Fla. 1978) (the evidence presented by the Bar must be clear and convincing before we may find that the code of conduct governing lawyers has been breached).

The Florida Bar v. Rayman, 238 So. 2d 594 (Fla. 1970)(the standard of “preponderance of evidence” is insufficient in Florida Bar proceedings

and the appropriate standard is “clear and convincing evidence.”)

The Florida Bar v. Wilkes, 179 So.2d 193 (Fla.1965)(if the accused attorney shall in the Florida proceedings properly raise the issues, we may be required to determine whether the proceedings in the sister state were so deficient as to make the foreign judgment unreliable as an automatic adjudication of guilt).

The Florida Bar v. Mogil, 763 So.2d 303(Fla. 2000)(probable cause vs. clear and convincing standards examined and distinguished from the instant facts).

2. See also, Exhibit O above.

3. Other Authorities:

“Clear and Convincing Evidence” is defined by the Florida Supreme Court in Florida Standard Civil Jury Instruction 405.4 as:

405.4 CLEAR AND CONVINCING EVIDENCE [“Clear and convincing evidence” differs from the “greater weight of the evidence” in that it is more compelling and persuasive.] “Clear and convincing evidence” is evidence that is precise, explicit, lacking in confusion, and of such weight that it produces a firm belief or conviction, without hesitation, about the matter in issue.

R. Other Referee Reports.

S. Demonstrative Aids.

T. Any exhibit listed by The Florida Bar.

I HEREBY CERTIFY that the foregoing was electronically filed and

served by email this 2nd day of December 2020 upon Tonya Avery, Bar Counsel, The Florida Bar, 444 Brickell Avenue, Suite M-100, Miami, Florida 33131 [@flabar.org] and Adria E. Quintela, Staff Counsel, The Florida Bar, Lakeshore Plaza II, Suite 130, 1300 Concord Terrace, Sunrise, Florida 33323 [aquintel@flabar.org].

Respectfully submitted by:

Louis Thaler

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was electronically filed and served by email this 30th day of December, 2021 upon Tonya Avery, Bar Counsel, The Florida Bar, 444 Brickell Avenue, Suite M-100, Miami, Florida 33131 [**tavery@flabar.org**] and by email to Patricia Ann Toro Savitz, Staff Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399 [**psavitz@floridabar.org**]; and the following Appellate Counsel, all from Holland & Knight, LLP, 315 South Calhoun Street, Suite 600, Tallahassee, Florida 32301: Kevin Cox, Esquire, [**kevin.cox@hklaw.com**], Tiffany Roddenberry, Esquire, [**tiffany.roddenberry@hklaw.com**].

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