IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

RICHARD LEE BREWSTER,

Respondent.

_____/

Supreme Court Case
No. SC21-1290

The Florida Bar File
No. 2020-30,338 (9A)

REPORT OF REFEREE ACCEPTING CONSENT JUDGMENT

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rule 3-7.6, Rules of Discipline, the following proceedings occurred:

On September 14, 2021, The Florida Bar filed its Complaint against respondent in these proceedings. On October 4, 2021, respondent filed his Answer to Complaint. The parties entered into a Conditional Guilty Plea for Consent Judgment. All of the aforementioned pleadings, responses thereto, exhibits received in evidence, and this Report constitute the record in this case and are forwarded to the Supreme Court of Florida.

II. FINDINGS OF FACT

A. Jurisdictional Statement. Respondent is, and at all times mentioned during this investigation was, a member of The Florida Bar, subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

B. Narrative Summary of Case.

1. Seacoast National Bank was selling bank-owned commercial real estate to a developer, UP Development LLC, who was represented by respondent. The contract for sale required the buyer, UP Development LLC, to submit a $100,000.00 deposit payment to an escrow agent selected by the buyer. According to the contract, the deposit would eventually become non-refundable as the deal progressed.

2. On June 10, 2019, after the deposit was due, the law firm for Seacoast National Bank emailed the broker and asked, "Can you please advise the title/settlement agent for the transaction? A deposit in the amount of $100,000.00 was due on 4/29/19. May we please get an escrow verification?" Respondent, who was with the owner of UP Development, LLC, in a construction trailer on undeveloped property belonging to the owner, replied by email stating, "I have the deposit check. Johnson Real Estate Law, PA is the title/settlement agent... We understand Seacoast

would like to close by June 30th, and we are working hard to make that happen."

3. Respondent did not possess the deposit check when he sent the e-mail. The owner of UP Development, LLC, told respondent the check was in the owner's car in the parking lot, and he instructed respondent to send the email saying respondent had the check and Johnson Real Estate Law, PA, is the title/settlement agent.

4. After respondent sent the email to the lawyer for Seacoast National Bank, he and the owner walked outside the trailer. The owner handed respondent some papers and envelopes and said the deposit check was in one of the envelopes. Respondent never saw the deposit check that day. The owner pulled an envelope out of the stack of papers he had handed respondent and told respondent that he was going to wire the deposit instead. The owner also told respondent he was going to consider using two other law firms as title/settlement agents.

5. Respondent never sent an email or other communication to the lawyer for Seacoast National Bank correcting or updating the information he had earlier sent on June 10, 2019, about respondent having the deposit check and Johnson Real Estate Law, PA, being the title/settlement agent.

6. In the summer of 2019, Johnson Real Estate Law, PA informed respondent that they did not have UP Development's deposit. Respondent did not advise the lawyer for Seacoast National Bank that no deposit had been made to Johnson Real Estate Law, PA.

7. In September 2019, according to the contract, the full $100,000.00 deposit would have become nonrefundable. In October 2019, Seacoast National Bank and its lawyer discovered that no deposit had been delivered to Johnson Real Estate Law, PA, and that no deposit had been made by UP Development LLC to any title/settlement agent. The deal to buy the property did not close.

III. RECOMMENDATIONS AS TO GUILT

I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar: 3-4.3 Misconduct and Minor Misconduct. The standards of professional conduct required of members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration of certain categories of misconduct as constituting grounds for discipline are not all-inclusive nor is the failure to specify any particular act of misconduct be construed as tolerance of the act of misconduct. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice may constitute a cause for discipline

whether the act is committed in the course of the lawyer's relations as a lawyer or otherwise, whether committed within Florida or outside the state of Florida, and whether the act is a felony or a misdemeanor; and 4-4.1 Transactions with Persons Other than Clients; Truthfulness in Statements to Others. In the course of representing a client a lawyer shall not knowingly: (a) make a false statement of material fact or law to a third person; or (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by rule 4-1.6.

The bar agrees to dismiss the following alleged rule violations and I therefore recommend the dismissal of the following: 4-1.2(d) Criminal or Fraudulent Conduct; 4-8.4(a) Misconduct; and 4-8.4(c) Misconduct. Respondent has maintained that this was a sophisticated real estate transaction where the parties, including the owner of UP Development, LLC, sometimes dealt directly with each other about the transaction without lawyers and he believed that the seller would be informed of the deposit by his client. While respondent should have corrected the inaccurate information in his June 10, 2019 email, respondent states that he was unaware that his client had made no deposit to any title/escrow agent until October 2019, when the deal fell through.

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

3.3(b) Mitigating Factors

A. Absence of a prior disciplinary record. [Standard 3.3(b)(1)].

B. Absence of a dishonest or selfish motive. The matter involves a commercial real estate transaction with sophisticated parties who sometimes communicated directly with each other without attorney involvement, which resulted in respondent not having personal knowledge of all actions or inactions of his client. [Standard 3.3(b)(2)].

C. Full and free disclosure to the bar or cooperative attitude toward the proceedings. [Standard 3.3(b)(5)].

D. Inexperience in the practice of law. Respondent was admitted to The Florida Bar in 2013, and a significant amount of time after his 2005 graduation from law school has been spent in active military service. [Standard 3.3(b)(6)].

E. Character or reputation. Respondent had a distinguished military career in the United States Navy, where he served ten years in

active service in addition to service in the reserves. He received the National Defense Service Medal (2), Navy and Marine Corps Achievement Medal (2), and the Navy and Marine Corps Commendation Medal, and retired at the rank of lieutenant commander. Since his retirement from the Navy, he has also been involved in the United States Coast Guard Auxiliary. [Standard 3.3(b)(7)].

F. Physical or mental disability or impairment. Respondent has very substantial and serious medical conditions, some of which are service-connected, and he has a 100% Veterans Administration service-connected disability rating. [Standard 3.3(b)(8)].

G. Remorse. [Standard 3.3(b)(12)].

7.1(b) Deceptive Conduct or Statements and Unreasonable or Improper Fees

Suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

V. CASE LAW

I considered the following case law prior to recommending discipline:

In The Florida Bar v. Henderson, 2020 WL 4432764 (Fla. July 31, 2020), the Court suspended Henderson for 30 days and directed him to

attend Ethics School and Professionalism Workshop. Henderson represented a close family friend who had filed a petition for an injunction against domestic violence against her husband. Henderson instructed his client to break into a safe containing the husband's confidential medical records in order to determine what the items were in the safe. Henderson believed that the husband was deceptive regarding the alleged medical records. Henderson researched marital property and after reviewing several cases believed that the safe was marital property. Thereafter, he reviewed the records, made copies and returned them to the wife. The referee found that "[a]lthough [Henderson] made a negligent error in judgment in copying the medical records which he knew belonged to an opposing party, he almost immediately self-corrected the mistake and he never had a dishonest motive in trying to retain the records or conceal his actions." Rules violated: 3-4.3.

In The Florida Bar v. Hodes, 2021 WL 223108 (Fla. Jan. 21, 2021), respondent received a 60-day suspension and was required to attend Ethics School. Hodes drafted a quit claim deed for his client. In error, Hodes listed the grantee as the client/petitioner, rather than the decedent's brother as their retainer spelled out. The decedent's son signed the incorrect deed and had it notarized. After Hodes received the signed and

notarized deed, he changed the date on the quit claim deed and changed the name of the grantee from the petitioner to the decedent's brother. Hodes then recorded the altered deed. Thereafter, civil litigation was initiated regarding the ownership of the property, and the court found that Hodes committed acts of fraud, misrepresentation, forgeries and/or material alterations regarding the subject property and title to same. Hodes' intent was not to deceive or make a material misrepresentation, but rather, to correct the aforementioned errors that Hodes had made on the deed. The court ultimately found Hodes' testimony credible. Rules violated: 3-4.2; 3-4.3; 4-1.1; 4-8.4(a); and 4-8.4(d).

In The Florida Bar v. Rodriguez, 177 So.3d 1274 (unpublished disposition) (Fla. Aug. 13, 2015), the Court suspended respondent for 90 days and required him to attend Ethics School. The complainant contacted Rodriguez and asked him to represent him in an uncontested divorce. Rodriguez advised that he had no experience in this area of law and that it would take him additional time to handle the matter. The complainant still wished for Rodriguez to represent him. In or around June of 2013, the complainant provided Rodriguez with the terms he and his estranged wife had agreed to, and he asked him to draft the necessary paperwork. Thereafter, Rodriguez failed to diligently handle the matter. The client grew

increasingly dissatisfied with the lack of progress and demanded that Rodriguez file the case as soon as possible. Rodriguez did not file the petition for dissolution of marriage until March 2014. Rodriguez believed that he had his client's authorization to sign the client's name to the financial affidavit and marital settlement agreement so that these documents could be filed, and the case resolved, without further delay. Rodriguez signed his client's name and notarized the documents himself. The complainant's estranged wife became concerned when she did not recognize the signature purporting to be her husband's on her copy of the filed documents and contacted complainant. There is no evidence that the documents signed and notarized by Rodriguez were inaccurate or that he was attempting to mislead or defraud the parties or the court, but rather it was his attempt to resolve the client's matter without further delay. Rules violated: 3-4.3; 4-1.3; 4-1.4(a); 4-3.2; 4-8.4(d).

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that he be disciplined by:

A. A 45-day suspension from the practice of law. Respondent will eliminate all indicia of respondent's status as an attorney on email, social

media, telephone listings, stationery, checks, business cards office signs or any other indicia of respondent's status as an attorney, whatsoever.

B. Payment of the disciplinary costs in this matter.

VII. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-7.6(m)(1)(D), I considered the following personal history of Respondent, to wit:

Age: 49

Date admitted to the Bar: December 5, 2013

Prior Discipline: None

VIII. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

I find the following costs were reasonably incurred by The Florida Bar:

Administrative Fee	$1,250.00
Court Reporters' Fees	$720.50
Investigative Costs	$213.00
TOTAL	$2,183.50

It is recommended that such costs be charged to respondent and that interest at the statutory rate shall accrue and that should such cost judgment not be satisfied within thirty days of said judgment becoming final, Respondent shall be deemed delinquent and ineligible to practice law,

pursuant to R. Regulating Fla. Bar 1-3.6, unless otherwise deferred by the Board of Governors of The Florida Bar.

Dated this 18th day of January, 2022.

/s/ Steven G. Rogers
STEVEN GLEN ROGERS, Referee

Original To:

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