IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

ERIK DAVID WESOLOSKI,

Respondent.

_____/

Supreme Court Case
No. SC21-1725

The Florida Bar File
No. 2017-70,351 (11P)

Received, Clerk, Supreme Court
DEC 07 2022

CONDITIONAL GUILTY PLEA FOR CONSENT JUDGMENT

COMES NOW, the undersigned respondent, Erik David Wesoloski, and files this Conditional Guilty Plea pursuant to Rule 3-7.9 of the Rules Regulating The Florida Bar.

1. Respondent is, and at all times mentioned herein was, a member of The Florida Bar, subject to the jurisdiction of the Supreme Court of Florida.

2. Respondent is currently the subject of a disciplinary proceeding which has been assigned Supreme Court Case No. SC21-1725; The Florida Bar File No. 2017-70,351 (11P); and is presently pending before the Honorable Victoria Ferrer, Referee.

3. The following allegations and rules provide the basis for respondent's guilty plea and for the discipline to be imposed in this matter.

Respondent admits the following facts are true and accurate and stipulates to the following:

a. Progress Residential entered into an agreement with Respondent's company, Title Capital Management LLC ("TCM") in or around November 2012. TCM agreed to perform due diligence in connection with the purchase of foreclosed properties located throughout the state. TCM assisted Progress Residential in expanding the company's real estate investment portfolio in the South Florida market, for which TCM was to receive a 4 percent commission of the purchase price of any property acquired on behalf of Progress Residential

b. TCM's duties included the creation of a proprietary spreadsheet to assist in determining a foreclosed property's value. The relationship between TCM and Progress Residential turned sour and Progress Residential terminated its business relationship with TCM in May 2013, with Progress Residential accusing TCM of artificially inflating the maximum bid price of the properties, which would result in larger commissions for TCM.In an email exchange beginning May 20, 2013, respondent and the president of Progress Residential engaged in discussions which made it apparent that litigation might ensue.

c. The parties tried to negotiate a settlement but ultimately failed. Consequently, on September 23, 2013, Progress Residential filed a lawsuit in Miami-Dade County, styled as Progress Residential, LP f/k/a Fundamental REO LP, v. Title Capital Management LLC. Two years later Progress Residential amended its complaint to include the respondent; respondent's law firm, Wesoloski Carlson, PA; two other companies owned by respondent, Rocket Lien Search, LLC and Erik Wesoloski, PA; and Respondent's wife, Case No. 2013-30433 CA 01.

d. After the suit was filed in November 2013, Progress Residential sought production of all of the due diligence materials completed by TCM and TCM produced everything it had in its possession without objection. On July 10, 2015, Progress Residential sought production of additional documents, including internal emails between TCM employees.

e. The court ordered production of the emails on August 12, 2015 and required TCM to provide an affidavit regarding the process by which it searched for such emails if no emails were produced.

f. On September 11, 2015, TCM served Progress residential with an affidavit of respondent. In the affidavit, respondent stated that with the exception of computers belonging to himself and Javier

Perez, the computers of all TCM staff where wiped clean and discarded or given away in September 2013 prior to Progress Residential filing its lawsuit against TCM.

g. Following a hearing on Progress Residential's Spoliation Motion Against TCM and Respondent for Destruction of Evidence, the court entered an order in favor of Progress Residential on December 29, 2016.

h. The court found that "it is clear that the electronic information existed at one time." As such, respondent was under a duty to preserve the emails, as "litigants are under a duty to preserve evidence which they know, or reasonably should know is relevant in an action." Indeed, the court found that the content in the correspondence between respondent and agents of Progress Residential established that respondent knew that absent a negotiated settlement, litigation was imminent.

i. Moreover, the court found that the evidence sought by Progress Residential would have been critical in proving or disproving its theory of the case. Furthermore, because of the numerical nature of the documents and data sought by Progress Residential, no other means existed to obtain this information.

j. Subsequent to the Spoliation Order, the emails were recovered and produced to Progress Residential prior to trial. Thereafter, the case was settled and dismissed by Progress Residential.

k. Respondent reported in the September 2015 affidavit that the computers containing the emails had been "wiped." Respondent asserts that he did so based on what the former IT employee of TCM told respondent. It was later revealed that nothing was "wiped". Instead, the IT employee had re-positioned the computers for use by other users so that the emails could not be readily accessed although they were still there. The IT employee also told respondent that the computers were discarded when in fact some were taken to his house, others placed in a storage closet at respondent's former office or were simply left behind at respondent's former office. Once that was known, TCM was able to retrieve the emails and produce them to Progress Residential.

l. Respondent admits his affidavit was poorly drafted and that he should have disclosed his understanding that the emails were no longer available came from the IT employee and not from his personal knowledge. Respondent also admits that his affidavit caused the parties and the court to incur unnecessary time and expense.

m. Regarding The Florida Bar File No. 2017-70, 351 (11P), respondent admits to violating Rule 4-3.4(a) (Fairness to opposing parties and counsel) and 4-8.4(d) (Conduct prejudicial to the administration of justice). The Florida Bar agrees to voluntarily dismiss Rule 4-3.3(a) (False Evidence; Duty to Disclose).

4. Respondent is acting freely and voluntarily in this matter, and tenders this Plea without fear or threat of coercion. Respondent is represented in this matter.

5. The disciplinary measures to be imposed upon respondent are as follows:

A. 90-day suspension

B. Completion of Ethics School within 6 months of the date of the Supreme Court of Florida's order approving this consent judgment and pay the $750.00 fee associated with this program;

C. Payment of disciplinary costs

6. Respondent acknowledges that, unless waived or modified by the Court on motion of respondent, the court order will contain a provision that prohibits respondent from accepting new business from the date of the order or opinion and shall provide that the suspension is effective 30 days

from the date of the order or opinion so that respondent may close out the practice of law and protect the interest of existing clients.

7. Respondent offers the following factors in mitigation:

   a. 3.3(b)(1) Absence of Prior Disciplinary Record;

   b. 3.3(b)(5) Full and free disclosure to the Bar and cooperative attitude toward the proceedings; respondent had several in-depth meetings with the Bar where he freely admitted what he did and how he could have handled the situation differently. Additionally, respondent's first lawyer passed away while the matter was being investigated by the grievance committee. Respondent requested time to secure new counsel, which he did within a month of informing the bar of his former attorney's passing. Shortly thereafter, the entire world experienced a force majeure caused by the shutdown due to the COVID-19 pandemic.

   c. 3.3(b)(12) Remorse.

   d. The misconduct in question did not occur while respondent was acting as an attorney but rather as a party to litigation.

e. Rather than further tying up court resources upon losing his motion for rehearing on the order at issue, respondent settled the case with the opposing party.

8. The Florida Bar has approved this proposed plea in the manner required by Rule 3-7.9.

9. If this plea is not finally approved by the referee and the Supreme Court of Florida, then it shall be of no effect and may not be used by the parties in any way.

10. Respondent agrees to 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, during the suspension period.

11. If this plea is approved, then respondent agrees to pay all reasonable costs associated with this case pursuant to Rule 3-7.6(q) in the amount of $1,250.00. These costs are due within 30 days of the court order. Respondent agrees that if the costs are not paid within 30 days of this court's order becoming final, respondent shall pay interest on any unpaid costs at the statutory rate. Respondent further agrees not to attempt to discharge the obligation for payment of the bar's costs in any future proceedings, including but not limited to, a petition for bankruptcy.

Respondent shall be deemed delinquent and ineligible to practice law pursuant to Rule 1-3.6 if the cost judgment is not satisfied within 30 days of the final court order, unless deferred by the Board of Governors of The Florida Bar.

12. Respondent acknowledges the obligation to pay the costs of this proceeding and that payment is evidence of strict compliance with the conditions of any disciplinary order or agreement and is also evidence of good faith and fiscal responsibility. Respondent understands that failure to pay the costs of this proceeding may reflect adversely on any reinstatement proceedings or any other bar disciplinary matter in which respondent is involved.

13. This Conditional Guilty Plea for Consent Judgment fully complies with all requirements of the Rules Regulating The Florida Bar.

Dated this 10th day of August, 2022.

Erik David Wesoloski
Respondent
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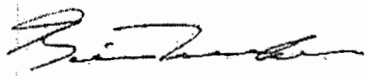
Dated this 10th day of August, 2022.



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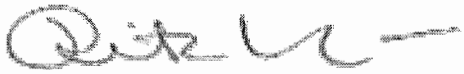
Dated this 10th day of August, 2022.



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