IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

MARC JEREMY SOSS,

Respondent.

_____/

Supreme Court Case
No. SC21-694

The Florida Bar File
No. 2016-10,503 (12C)

Received, Clerk, Supreme Court
NOV 16 2021

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 May 11, 2021, The Florida Bar filed its Complaint against Respondent in these proceedings. On June 1, 2021, respondent filed his answer. On July 12, 2021, a case management conference was held, and the final hearing was scheduled for September 22 through 24, 2021, with a sanction hearing scheduled for October 8, 2021. On September 10, 2021, respondent filed a Motion to Continue Trial and a Joint Stipulation to Continue Trial. On September 10, 2021, the referee held an emergency hearing and granted the Motion to Continue Trial. The final hearing was

continued to November 8-10, 2021. On October 22, 2021, a Conditional Guilty Plea for Consent Judgment was filed with the referee, and the Final Hearing was cancelled.

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. The facts as set forth in the Conditional Guilty Plea for Consent Judgment are deemed admitted and adopted as my findings of facts as stated below:

Respondent represented Mrs. Dorothy Bloom in a guardianship matter pertaining to her husband, Leon Bloom, and as the surviving spouse of the decedent in the probate of Leon Bloom's estate. Respondent represented Mrs. Bloom in seeking reimbursement from Mr. Bloom's trust for funds she expended for the care of Mr. Bloom.

In February 2015, the court ratified a global settlement agreement which made the Leon Bloom Revocable Trust a party to the guardianship proceedings and appointed Caldwell Trust Company as Successor Trustee for the Leon Bloom Revocable Trust. In July 2015, Caldwell Trust Company sought approval from the court to resign. On July 22, 2015, the court approved the petition for resignation and granted respondent's client, Mrs.

Bloom, the authority to select the successor trustee for the Leon Bloom Revocable Trust. Regarding notice of the selection, the court's order stated by handwritten notation, "a successor trustee shall be presented for appointment by the end of the business day of 7/23/15 – Robert M. Johnson is an interested party for the purpose of notice and objection to successor trustee."

On July 23, 2015, Mrs. Bloom identified respondent and Raymond James Trust, Inc. as the successor trustees for the Leon Bloom Revocable Trust, but Raymond James declined to serve. Respondent served the notice of the appointment as successor trustee on the interested parties and beneficiaries, but not on the court for approval or confirmation. Respondent did not interpret the Court's ruling to require such approval.

At the time respondent was identified as successor trustee, respondent's client, Dorothy Bloom, had a claim against the Leon Bloom Revocable Trust for reimbursement of expenses she paid for Mr. Bloom's care. From July 23, 2015 until January 13, 2016, respondent simultaneously served as counsel for Dorothy Bloom and as trustee of the Leon Bloom Revocable Trust. In April 2016, the court removed respondent as successor trustee stating that the dual roles created a conflict of interest.

During the bar's investigation into this matter, the bar examined respondent's roles and whether the client, Mrs. Bloom, had waived any conflict of interest concerning those roles. The bar requested documentation from respondent regarding Mrs. Bloom's waiver of a conflict of interest and in response respondent provided a PDF copy of an Acknowledgment and Waiver of Informed Consent ("Acknowledgment and Waiver"). The document contained a signature by Mrs. Bloom and was dated July 2015. After receipt of the Acknowledgment and Waiver, the bar discovered the PDF document had been altered by respondent at or around the time the bar requested a copy of the document. Respondent later explained he converted the client's signature on the document due to its illegibility. Respondent stated no substantive changes were made to document. There is not a copy of the document, unaltered, and unfortunately, Mrs. Bloom is deceased and was not able to be interviewed by the bar.

While acting as successor trustee from July 23, 2015 until April 6, 2016, respondent disbursed $127,860.00 out of the trust. With these funds,

respondent paid an attorney to represent him as the trustee regarding a motion to disqualify him as trustee, held funds in his trust account and paid himself trustee fees for performing acts consistent with those of a trustee. The court later determined that respondent was not legally entitled to utilize trustee funds as he was not legally the successor trustee, and ordered the fees disgorged. Respondent was ordered to pay back the funds held in trust, the funds paid to himself as trustee fees and any funds paid to the attorney that had not previously been returned. Respondent timely complied and paid back all the funds.

III. RECOMMENDATIONS AS TO GUILT

I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar: Rule 3-4.3 (Misconduct and Minor Misconduct) and Rule 4-8.4(d) (Misconduct – A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice).

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. Respondent will no longer hold himself out as a licensed attorney in any media within his control for the duration of his term of suspension. Respondent will provide The Florida Bar with an affidavit specifically identifying any media within his control for which he has eliminated such indicia, which is a separate and distinct affidavit from the requirements of Rule 3-5.1(h).

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

3.3 Mitigation
(b) Mitigating Factors.
(1) absence of prior disciplinary record
(8) physical or mental disability or impairment or substance related disorder
(10) interim rehabilitation

6.2 Abuse of the Legal Process
(b) Suspension. Suspension is appropriate when a lawyer knowingly violates a court order or rule and causes injury or potential injury to a client or a party or causes interference or potential interference with a legal proceeding.

V. CASE LAW

I considered the following case law prior to recommending discipline:

The Florida Bar v. Brian McDevitt, No. SC18-307 (Fla. Sept. 6, 2018) [TFB # 2018-00,250 (2B)] – By Court order, respondent was suspended for 30-day pursuant to a Conditional Guilty Plea for Consent Judgment. This was a reciprocal discipline case. In June 2005, respondent was the attorney of record in a probate case. Upon consent of the parties, respondent represented all of the beneficiaries and the personal representative of the decedent. From June 2005 through June 2009, several of the beneficiaries passed away and the personal representative developed dementia and became incapacitated. Respondent failed to remove and replace the personal representative despite her inability to carry out her duties. Respondent allowed the decedent's residence to be sold while utilizing the personal representative's daughter to authorize the sale. There was no evidence that the residence was sold for less than market value. In 2010, one of the beneficiaries became enraged when it was discovered that he could not receive his inheritance due to his pending bankruptcy. When confronted, respondent was not candid with his client(s) and failed to disclose his multiple conflicts of interest. At that point, respondent should have, but failed, to withdraw as the attorney of the personal representative

and beneficiaries. No aggravating or mitigating factors were noted. Although New Jersey found dishonest conduct, essentially, respondent failed to properly acknowledge and avoid an inherent conflict of interest in an estate matter. Respondent knew he should have withdrawn but allowed his friendship with the family to cloud his professional judgment.

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. Respondent shall be suspended for a period of thirty (30) days;

B. Respondent shall attend The Florida Bar's Ethics School within six (6) months of this Court's order accepting this Plea. Respondent shall be responsible for the fees associated with that program;

C. Respondent shall complete a mental health evaluation by Florida Lawyer's Assistance, Inc. and any recommended treatment or contract. Respondent agrees to contact Florida Lawyers Assistance, Inc. (FLA, Inc.) at 800-282-8981 for an evaluation within thirty (30) days of Supreme Court order entered approving this consent judgment. At the end of sixty (60) days, respondent will provide the Bar's headquarters office with proof that respondent has scheduled an evaluation. Respondent will abide by all recommendations made by FLA, Inc., including, but not limited to, entering into a dual diagnosis rehabilitation contract for a term of three (3) years with FLA, Inc. Respondent agrees to be placed on probation for

the length of the rehabilitation contract not to exceed five (5) years. If a contract is recommended, respondent will pay a FLA, Inc., registration fee of $250.00 and a probation monitoring fee of $100.00 per month directly to FLA, Inc. The Florida Bar will monitor respondent's compliance with his FLA, Inc. rehabilitation contract, including nonpayment on the monthly monitoring fee. Should respondent fail to pay FLA, Inc., respondent's failure to pay will be reported to The Florida Bar and the bar will follow up, with regards to respondent's noncompliance, up to and including initiating contempt proceedings for failure to pay the monthly monitoring fees. All of the above shall be at respondent's expense; and,

D. Respondent shall pay the Bar's costs in this disciplinary proceeding.

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: 55

Date admitted to the Bar: 05/08/1992

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:

Investigative Costs	$29,571.61
Audit Costs	$425.00
Bar Counsel Costs	$127.89
Subpoena Service Cost	$10.00
Court Reporters' Fees	$2,879.80
Administrative Fee	$1,250.00
TOTAL	$34,264.30

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 4 day of November, 2021

Keith R. Kyle 11/4/21

Keith R Kyle, Referee
Lee County Justice Center
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Original To:

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