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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

MARC JEREMY SOSS,

Respondent.

_____/

Supreme Court Case
No. SC-

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

RECEIVED, 05/11/2021 07:41:28 AM, Clerk, Supreme Court

COMPLAINT

The Florida Bar, complainant, files this Complaint against Marc Jeremy Soss, respondent, pursuant to the Rules Regulating The Florida Bar and alleges:

1. Respondent is and was at all times mentioned herein a member of The Florida Bar admitted on May 8, 1992 and is subject to the jurisdiction of the Supreme Court of Florida.

2. Respondent resided and practiced law in Manatee County, Florida, at all times material.

3. The Twelfth Judicial Circuit Grievance Committee C found probable cause to file this complaint pursuant to Rule 3-7.4, of the Rules Regulating The Florida Bar, and this complaint has been approved by the presiding member of that committee.

4. Respondent represented Mrs. Dorothy Bloom in a guardianship matter pertaining to her husband, Leon Bloom.

5. Respondent represented Mrs. Dorothy Bloom as the surviving spouse of the decedent in a probate matter pertaining to Leon Bloom's estate upon his death.

6. On September 19, 2014, Robert M. Johnson, filed a Petition to Determine Incapacity in *In Re: Guardianship of Leon Bloom*, Case No. 2014-GA-3746, in the circuit court in and for Sarasota County, Florida.

7. On September 19, 2014, Robert M. Johnson filed a Petition for Appointment of Emergency Temporary Guardian and a Petition for Appointment of Plenary Guardian in *In Re: Guardianship of Leon Bloo*m, Case No. 2014-GA-3747, in the circuit court in and for Sarasota County, Florida.

8. Leon Bloom died on May 14, 2015.

9. On September 10, 2015, Marshall Bloom filed a Petition for Administration in *In Re: Estate of Leon Bloom*, Case No. 2015-CP-3765.

10. Prior to the death of Leon Bloom, Leon Bloom and Dorothy Bloom resided together with Leon Bloom receiving home health care services.

11. Respondent represented Mrs. Bloom in seeking reimbursement from Mr. Bloom's trust for funds she used for the care of Mr. Bloom, in excess of $500,000.00.

12. On January 27, 2015, a mediation was held in the guardianship proceedings and ultimately a global settlement was reached.

13. In the settlement order dated February 11, 2015, the court ratified the global settlement agreement of January 27, 2015. In the order, the court included the Leon Bloom Revocable Trust as a party to the guardianship proceeding, accepted the resignation of Robert Johnson as successor trustee, and appointed Caldwell Trust Company as Successor Trustee for the Leon Bloom Revocable Trust.

14. On July 2, 2015, Caldwell Trust Company, successor trustee for the Leon Bloom Revocable Trust at the time, filed a Petition of Successor Trustee for Approval of Successor Trustee's Resignation.

15. 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.

16. The court's order dated July 22, 2015, 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."

17. On July 23, 2015, Mrs. Bloom identified respondent and Raymond James as the successor trustees for the Leon Bloom Revocable Trust.

18. Raymond James declined the role of successor trustee.

19. Respondent served the notice of appointment of successor trustee on the interested parties and beneficiaries.

20. Respondent failed to serve a notice of appointment with the court.

21. On July 29, 2015, after receiving the notice of appointment, the interested party, Robert Johnson, filed an objection to the appointment due to conflict of interest.

22. Respondent failed to get approval by the court for his appointment as successor trustee.

23. Respondent denied that he was required to get approval by the court for his appointment because the trust was not the subject of the litigation or a party.

24. In an order dated April 6, 2016, the court found that "Dorothy Bloom purported to appoint [respondent] Soss and Raymond James on

July 23, 2015. This appointment was never confirmed by the Court, as mandated by the July 22, 2015 Order Approving Successor Trustee's Resignation."

25. During a subsequent hearing on September 12, 2018, pertaining to funds that had been removed from the trust while respondent was acting as de facto trustee, Judge Mercurio found "it incredible to believe in good faith that [the July 22, 2015, order approving the petition for resignation and granting respondent's client, Mrs. Bloom, the authority to select the successor trustee] was somehow misinterpreted."

26. Additionally, the circuit court found that "it was clear that a successor trustee had to be presented and approved by the court or confirmed by the court, and that was never done."

27. While acting as successor trustee of the Leon Bloom Revocable Trust, respondent took $127,860.00 out of the trust, not including money that was alleged to be overpaid to Mrs. Bloom.

28. An evidentiary hearing was held on January 8 and 9, 2018, which largely focused on the funds respondent withdrew from the trust while acting as putative trustee.

29. During the hearing, the new successor trustee's accountant testified that respondent, while acting as trustee from August 2015 to April

2016, paid himself $45,360.00, payed an additional $82,500.00 to his attorney John Waskom in the disqualification proceeding, and allegedly overpaid Mrs. Bloom $62,494 from the trust.

30. The successor trustee's lawyer testified at that hearing that respondent was sent a letter on May 11, 2016, seeking return of the $127,860.00 respondent took from the trust.

31. Respondent claimed he did not see the letter requesting funds until mid-2017.

32. Respondent testified that he still held $20,000.00 from the trust despite getting the demand in case he was awarded attorney fees.

33. Subsequently, the circuit court sua sponte entered an order requiring respondent to return the $20,000.00 to the trust.

34. During a subsequent hearing on September 12, 2018, the court considered a Supplemental Motion for Order Compelling Return of Funds Converted from Trust and an Amended Motion for Order Compelling Return of Funds Converted from Trust, both filed by Marshall Bloom, with the Trustee's Notice of Joinder in the motions.

35. On September 12, 2018, the court found that the amount of money taken by respondent from the Leon Bloom Revocable Trust was $127,860.00. Of that money, the court found $18,708.75 had been

reimbursed by John Wascom and $20,000.00 had previously been reimbursed by respondent upon court order.

36. The court found that of the remaining funds, $25,360.00 was paid to respondent and was "improperly paid from the trust because [respondent], although acting as putative or de facto trustee, was not legally entitled to be paid that money in light of the Court's orders, and he was never legally the successor trustee."

37. The court stated:

> I find that it would be an abuse of my discretion to ignore the fact that those payments were received by [respondent] at a time when he knew or should have known that he should not have made the payments because he was not an appropriate trustee; that as an experienced probate and trustee attorney, if he had any question about his ability to be presented and approved by the Court as successor trustee, simple enough in light of the fact he clearly knows how to file pleadings with the Court, he could have set a hearing on the request by Dorothy Bloom to appoint him as successor trustee and had a hearing. That was not done.

38. The court ordered respondent to repay $17,959.50 to the trust which contemplated a credit of $7,400.50 that the court had granted to respondent in connection with a Motion for Fees and Costs on Appeal filed by Mrs. Bloom in connection with Appellate Case No. 2D16-4185.

39. The court declined respondent's argument that he was entitled to compensation for acting as a "de facto" trustee.

40. The remaining $63,791.25 was paid to John Wascom and the Icard Merrill law firm for representing respondent.

41. The court noted that these payments to Wascom and the Icard Merrill law firm were “ill-advised and inappropriate, in light of the clear evidence that [respondent] should not have been named as the successor trustee,” however did not order the money paid to be reimbursed as “to order the return of those funds would be inappropriate and an undue punishment to [respondent].”

42. On appeal in Appellate Case No. 2D18-4441, the Second District Court of Appeals found that the $63,791.25 paid to Mr. Wascom and Icard Merrill law firm were paid “for the benefit of [respondent] – not for the benefit of the Trust.”

43. The Second District Court of Appeals reversed and remanded the matter to the circuit court to “enter an order requiring [respondent] to return all of the funds he paid to his attorney.”

44. While acting as de facto trustee, respondent took $127,860.00 out of the Leon Bloom Revocable Trust that he knew or should have known that he was not entitled to.

45. In July 2015, when Mrs. Bloom named respondent as the successor trustee, respondent was representing Mrs. Bloom in a claim

against the trust for reimbursement of expenses she had paid for Mr. Bloom's care in excess of $500,000.00.

46. Respondent represented Mrs. Bloom in the guardianship matter from September 22, 2014, until January 13, 2016, when the court approved a stipulated substitution of counsel.

47. Respondent held the position of de facto trustee from July 23, 2015, until the court issued an April 6, 2016, order which removed respondent as successor trustee.

48. In the April 6, 2016 order, the court found that respondent's "representation of Dorothy Bloom in her claim against the Trust while simultaneously serving as Trustee of the Trust created an irreconcilable conflict of interest. His duty as Trustee is to all beneficiaries, yet he owes a duty of loyalty to his former client, Dorothy Bloom. He cannot oppose her claim against the Trust in his role as Trustee. This conflict of interest is not cured by the January 13, 2016 Order Approving Stipulation of Counsel, as [respondent] owes the same duty of loyalty to a former client."

49. During a sworn statement in this bar matter on October 28, 2019, respondent testified that, "[w]ell, I knew there would be a conflict of interest. As trustee I would have the authority to make decisions over the amount of reimbursement…"

50. During respondent's sworn statement on October 27, 2019, respondent could not recall if he had received a signed waiver of conflict from Mrs. Bloom.

51. On November 18, 2019, a letter requesting additional information and details surrounding the conflict of interest was sent from The Florida Bar to respondent. Specifically, the letter requested respondent to "[p]rovide a copy of any documents and/or signed waivers of conflict pertaining to potential conflicts of interest with your client, Dorothy Bloom."

52. In a letter dated December 16, 2019, respondent advised the bar that his client knowingly and intelligently waived any conflict if any could have arisen in the matter.

53. With his December 16, 2019 correspondence, respondent provided the bar a PDF copy of an Acknowledgment and Waiver of the Informed Consent dated July 2015 purportedly signed by Mrs. Bloom.

54. In response to a request for additional information, respondent provided a letter dated January 23, 2020, wherein he explained that he received a copy of the signed document from Mrs. Bloom within a few days of her signing it when he visited her at her home.

55. Respondent stated he took the document back to his office, scanned the document and disposed of the copy provided by Mrs. Bloom.

56. The signature page of the PDF Acknowledgment and Waiver of the Informed Consent was not a scanned image of the signed document as represented by respondent.

57. The document was created in Microsoft Word.

58. Mrs. Bloom's signature on the PDF Acknowledgment and Waiver of the Informed Consent was a signature block and blue ink signature added from an unknown source into a Word document.

59. The document was created on December 16, 2019, the same day that it was provided to The Florida Bar.

60. On December 16, 2019, respondent did not provide any information with his submission of the PDF Acknowledgment and Waiver of the Informed Consent that the document had been altered.

61. After being provided with evidence that The Florida Bar's expert, Sylint Group, Inc., had determined that the December 16, 2019 PDF document had been altered, respondent admitted that he in fact altered the PDF document.

62. Respondent claimed he altered the document to make the signature block more clear.

63. Respondent explained that in November or December 2019, he located a printed out copy of the PDF document that he had scanned in 2015.

64. Respondent stated he believes he re-scanned the printed-out copy, converted the scanned copy into a Word document, enlarged and enhanced Mrs. Bloom's signature with blue ink by tracing over her signature and pasted what he did back into the Word document.

65. Respondent stated he then rescanned what he had created back into his computer as a PDF.

66. Respondent requested that The Florida Bar and Sylint Group, Inc., consider his explanation by analyzing his computer.

67. On July 7, 2020, The Florida Bar subpoenaed respondent to provide all computers hardware, computer storage media, digital content and online sharing services pertaining to the Acknowledgement and Wavier of the Informed Consent dated July 2015 and provided to The Florida Bar on December 16, 2019, for forensic examination by Sylint Group, Inc.

68. On July 17, 2020, at respondent's request, Sylint Group, Inc., representatives went to respondent's office to retrieve the relevant devices.

69. At his office on July 17, 2020, respondent produced an evidence form listing five (5) computers, one (1) hard drive for pick up and

a copy of the “Dorothy Bloom (Copy) Acknowledgment and Waiver 3 Pages.”

70. Respondent or a representative of respondent refused to sign the Sylint Evidence / Chain of Custody forms resulting in the pickup not being completed at the initial scheduled time on July 17, 2020.

71. On July 22, 2020, respondent and a second individual delivered to Sylint Group, Inc. four (4) computers, a hard drive, and printed material.

72. On July 22, 2020, respondent failed to deliver an Acer Laptop that was listed on his evidence list of July 17, 2020.

73. The forensic examination by Sylint Group, Inc. of respondent’s equipment dropped off showed: “Of the computer / hard drives provided to Sylint on July 22, 2020, under the Subpoena Duces Tecum of July 7, 2020, only the computer /hard drive described under Item ID "c" [Toshiba] may be relative in response to this Subpoena. However, the computer / hard drive only has relevance because an attached USB memory device, that was undisclosed and not provided by [respondent]…”.

74. Respondent provided equipment that showed evidence of data being overwritten and an indication of anti-forensics’ activity.

75. Respondent did not provide a computer or hard drive that was currently being used in the normal course of business.

76. Respondent did not provide the device used to create or modify the PDF Acknowledgment and Waiver of the Informed Consent.

77. Respondent failed to respond to The Florida Bar's subpoena duces tecum dated July 7, 2020, by not providing all the devices associated with the Acknowledgement and Wavier of the Informed Consent dated July 15, 2015 provided to The Florida Bar on December 16, 2019.

78. Respondent presented the false document to The Florida Bar on December 16, 2019.

79. Respondent deliberately misrepresented to The Florida Bar the Acknowledgment and Waiver of the Informed Consent dated July 2015 was signed by Dorothy Bloom.

80. By reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: Rule 3-4.3 (Misconduct and Minor Misconduct); Rule 4-1.5 (Fees and Costs for Legal Services); Rule 4-1.7 (Conflict of Interest; Current Clients); Rule 4-1.9 (Conflict of Interest; Former Clients); Rule 4-3.4 (Fairness to opposing party and counsel); Rule 4-8.1(a) (A lawyer in connection with a disciplinary matter shall not knowingly make a false statement of material fact); Rule 4-8.1(b) (A lawyer in connection with a disciplinary matter shall not fail to disclose a fact necessary to correct a misapprehension known by the person to have

arisen); Rule 4-8.4(c) (Misconduct – a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation); 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); and Rule 4-8.4(g) (Misconduct – a lawyer shall not fail to respond to an official bar inquiry).

WHEREFORE, The Florida Bar prays respondent will be appropriately disciplined in accordance with the provisions of the Rules Regulating The Florida Bar as amended.

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CERTIFICATE OF SERVICE

I certify that this document has been efiled with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, with a copy provided via email to Brett Alan Geer, Counsel for Respondent, Marc Jeremy Soss, at brettgeer@geerlawfirm.com; a copy furnished to Mr. Geer's record Bar address, by United States Certified Mail, Return Receipt Requested, 7017 1450 0000 7821 1046, at 3030 North Rocky Point Drive West, Suite 150, Tampa, Florida 33607-7200; and via email to Jennifer Robyn Dillon, Bar Counsel, The Florida Bar, jdillon@floridabar.org , on this 11th day of May, 2021.

Patricia Ann Toro Savitz
Staff Counsel

NOTICE OF TRIAL COUNSEL AND DESIGNATION OF PRIMARY EMAIL ADDRESS

PLEASE TAKE NOTICE that the trial counsel in this matter is Jennifer Robyn Dillon, Bar Counsel, whose address, telephone number and primary email address are The Florida Bar, Tampa Branch Office, 2002 N. Lois Ave., Suite 300 Tampa, Florida 33607-2386, (813) 875-9821 and jdillon@floridabar.org; Respondent need not address pleadings, correspondence, etc. in this matter to anyone other than trial counsel and to Patricia Ann Toro Savitz, Staff Counsel, The Florida Bar, 651 E Jefferson Street, Tallahassee, Florida 32399-2300, psavitz@floridabar.org.

MANDATORY ANSWER NOTICE

RULE 3-7.6(h)(2), RULES REGULATING THE FLORIDA BAR, PROVIDES THAT A RESPONDENT SHALL ANSWER A COMPLAINT.