

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

MARK E. A. BAKAY,

Respondent.

Supreme Court Case
No. SC-

The Florida Bar File
No. 2020-30,127 (7B)

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COMPLAINT

The Florida Bar, complainant, files this Complaint against Mark E. A. Bakay, 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 September 17, 2004 and is subject to the jurisdiction of the Supreme Court of Florida.
2. Respondent practiced law in Orange and Seminole Counties, Florida, at all times material.
3. The Seventh Judicial Circuit Grievance Committee "B" 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.

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4. In or around 2019, respondent represented Terrell Devon Williams-Bey in a landlord-tenant matter.

5. On June 8, 2019, Williams-Bey and respondent went to an automobile dealership, Lexus of Winter Park, (hereinafter referred to as the “dealership”) to purchase a vehicle for I Care, LLC, a business owned by Williams-Bey. Respondent accompanied Williams-Bey to the dealership as both an attorney and a friend.

6. Respondent and Williams-Bey advised the representatives of the dealership that Williams-Bey and/or I Care, LLC had a case being handled by another attorney wherein Williams-Bey had received a settlement and was awaiting receipt of the settlement proceeds from the attorney.

7. Respondent provided the dealership a check from respondent’s law office operating account in the amount of \$47,876.18 for the vehicle. Respondent, Williams-Bey and the dealership agreed that the check would be held by the dealership until June 12, 2019, when Williams-Bey would provide a substitute check to the dealership in the amount of \$47,876.18 that he anticipated to personally have after receiving the settlement proceeds.

8. The parties further agreed that, if Williams-Bey failed to provide the substitute check by June 12, 2019, respondent's check could be cashed by the dealership.

9. The dealership permitted Williams-Bey to take possession of the vehicle on June 8, 2019, based upon respondent assurances that, in the event Williams-Bey failed to remit the substitute check as payment, respondent's law office operating account had sufficient funds to cover the payment due for the vehicle.

10. The dealership held respondent's operating account check for more than the required one-week time period, but Williams-Bey failed to tender a replacement check for the transaction.

11. On June 24, 2019, the dealership presented respondent's operating account check to the bank; however, the check was not honored due to insufficient funds.

12. The dealership then attempted to contact respondent on multiple occasions regarding the dishonored check. Respondent failed to respond.

13. The dealership later learned that the vehicle it sold to Williams-Bey was subsequently sold to CarMax by I Care, LLC. The dealership did not receive any funds from this transaction.

14. On September 10, 2019, Winter Park Imports, Inc. (doing business as Lexus of Winter Park) filed a civil lawsuit against respondent and Williams-Bey for the unpaid check and sought damages for the worthless check, fraud, fraud in the inducement and negligent misrepresentation in Case No. 48-2019-CA-011038-A, in the Circuit Court of the Ninth Judicial Circuit in Orange County, Florida.

15. Pursuant to the Uniform Order Setting Case for Non-Jury Trial, Scheduling Conference/Pretial Conference and Requiring Pretial Matters to be Completed, the circuit court required the parties to exchange witness lists and a schedule of all exhibits, meet ten business days prior to the pretial conference, and provide a joint pretial statement. Respondent failed to comply with this court order and in response, the plaintiff filed a motion for sanctions against respondent which was then granted by the court.

16. On October 29, 2020, the circuit court, with the consent of respondent, granted the plaintiff's motion for summary judgment and entered an order for damages.

17. The court found that the plaintiff was entitled to summary judgment for Count I for a worthless check, Count II for a worthless check that respondent failed to pay after it was returned unpaid, Count III and IV

for fraud and fraudulent inducement for untruthfully, implicitly, and expressly representing to the dealership that his law office account check would be paid and based upon that representation the dealership sold the vehicle to Williams-Bey, and Count V for negligent false representation.

18. In the factual findings of the order, the court found that respondent “misled [sic] Lexus into selling the vehicle by his conduct in providing Lexus with a check from his Law Firm to pay for the vehicle which he represented would be paid with funds in his account and by his conduct in not having sufficient funds to honor the check.”

19. Respondent was then ordered to pay damages to the plaintiff in the amount of \$218,102.52.

20. By reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar:

(a) 3-4.3 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.

(b) 4-3.4(c) A lawyer must not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.

(c) 4-3.4(d) A lawyer must not, in pretrial procedure, make a frivolous discovery request or intentionally fail to comply with a legally proper discovery request by an opposing party.

(d) 4-4.1(a) In the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person.

(e) 4-8.4(c) A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, except that it shall not be professional misconduct for a lawyer for a criminal law enforcement agency or regulatory agency to advise others about or to supervise another in an undercover investigation, unless prohibited by law or rule, and it shall not be professional misconduct for a lawyer employed in a capacity other than

as a lawyer by a criminal law enforcement agency or regulatory agency to participate in an undercover investigation, unless prohibited by law or rule.

(f) 4-8.4(d) A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic.

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 Mark E. A. Bakay, at bakaylawfirm@gmail.com; and that a copy has been furnished by United States Mail via certified mail No. 7017 1450 0000 7821 0995, return receipt requested to Mark E. A. Bakay, whose record bar address is 2431 Aloma Avenue, Suite 254, Winter Park, Florida 32792-2541 and via email to Carrie Constance Lee, Bar Counsel, The Florida Bar, 1000 Legion Place, Suite 1625, Orlando, FL 32801-1050, at clee@floridabar.org and orlandooffice@floridabar.org; on this 25th 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 Carrie Constance Lee, Bar Counsel, whose address, telephone number and primary email address are The Florida Bar, Orlando Branch Office, The Gateway Center, 1000 Legion Place, Suite 1625, Orlando, Florida 32801-1050, (407) 425-5424 and clee@floridabar.org and orlandooffice@floridabar.org. Respondent need not address pleadings, correspondence, etc. in this matter to anyone other than trial counsel and to 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.