IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

LEE SEGAL,

Respondent.

_____/

Supreme Court Case
No. SC-

The Florida Bar File Nos.
2021-10,292 (6D)
2021-10,336 (6D)
2021-10,376 (6D)

CONDITIONAL GUILTY PLEA FOR CONSENT JUDGMENT

COMES NOW, the undersigned respondent, Lee Segal, 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 Florida Bar disciplinary matters which have been assigned The Florida Bar File Nos. 2020-10,292(6D); 2021-10,336(6D); and 2021-10,376(6D).

3. The Sixth Judicial Circuit Grievance Committee "D" found probable cause as to The Florida Bar File Nos. 2020-10,292(6D); 2021-10,336(6D); and 2021-10,376(6D).

4. Respondent is acting freely and voluntarily in this matter and tenders this plea without fear or threat of coercion. Respondent is represented by counsel, Lansing C. Scriven, in this matter.

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

A. One-year suspension from the practice of law; and

B. Payment of costs in this disciplinary proceeding.

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

A. In The Florida Bar File No. 2020-10,292 (6D), respondent represented the plaintiff in *Abpaymar*, *LLC v. Deutsche Bank National Trust Company*, Pasco County case number 2020-CA-1437. As a part of that representation, respondent represented to the court that he had properly served the defendant at an address in New York and with no answer having been filed, a default judgment was warranted. The day after the clerk entered a default in the matter, respondent filed a motion for summary judgment seeking an entry of a judgment for $511,500.00.

During the hearing on the motion for summary judgment, the judge expressed concerns whether respondent had properly served the defendant, Deutsche Bank National Trust Company. The summons submitted to the clerk by respondent indicated that Deutsche Bank National Trust Company's service address was 60 Wall Street, New York, NY 10005. A summons was subsequently issued with that address. Thereafter, on July 30, 2020, an affidavit of service was filed indicating that a process server served Deutsche Bank National Trust Company on July 17, 2020, at CT Corp, 28 Liberty Street, NY, NY 10005. In a letter furnished to the judge following the hearing, respondent acknowledged there is a registered agent in Florida for "Deutsche Bank Trust Company, National Association," but that Deutsche Bank Trust Company, National Association, was not the same entity as the defendant. Respondent maintained that Deutsche Bank National Trust Company was properly served in New York. However, there is no Deutsche Bank National Trust Company with a registered agent in New York. There are entities with similar, but not identical, names with registered agents in New York.

Thereafter, and due to all the discrepancies, the court entered an order denying the motion for summary judgment and appointed an attorney ad litem to determine whether the defendant had a registered agent in Florida. Within hours of the court's order, respondent filed a notice of voluntary dismissal.

In at least one other case respondent filed against Deutsche Bank National Trust Company, while also defending a foreclosure action brought by Deutsche Bank National Trust Company involving the same property, respondent did not file a notice of related cases in the second case. Respondent was of the view that the cases were not related because although Deutsche Bank National Trust Company was the party-plaintiff in the foreclosure action, counsel in that action was actually representing the servicer of the subject loan, not Deutsche Bank National Trust Company; whereas, in the subsequent action respondent was suing Deutsche Bank National Trust Company as the real party in interest for illegal prosecution of the foreclosure action.

Another case that respondent filed against Deutsche Bank National Trust Company was ultimately removed to federal court, Case No. 2:21-cv-66. Several other cases that respondent filed against financial institutions were also removed to federal court ("Federal Cases"). For instance, in Case No. 2:21-cv-66, Deutsch Bank National Trust Company averred that respondent failed to properly effect service of process and that its ensuing motion for remand was timely filed. The parties in Case No. 2:21-cv-66 eventually entered into a stipulation dismissing the case. Following the stipulation, Deutsche Bank National Trust Company filed a motion for sanctions and attorneys' fees, arguing, among other things, that in Case No. 2:21-66 and the other Federal Cases, respondent had knowingly improperly served financial institutions in an attempt to obtain quick defaults and default judgments. Although noting that it did not "condone the arguably contumacious behavior of respondent . . . in filing so many state court actions and how [respondent] conducted those proceedings," the court in Case No. 2:21-66 declined to impose sanctions against respondent.

In the Federal Cases, several courts were faced with motions to remand filed by respondent and competing motions to quash service filed by the financial institutions. Generally, respondent attempted to have the Federal Cases remanded to state court, alleging that the financial institutions untimely removed those cases after the 30-day deadline following service of process. In several of the Federal Cases, the district courts entered orders denying the motions for remand and granting the defendants' motion to quash service of process. In only one of the Federal Cases did the district court grant the motion to remand filed by respondent and deny the defendant's motion to quash service.

Respondent admits by reason of the foregoing he has violated the following Rules Regulating The Florida Bar: Rule 4-3.1 (Meritorious Claims and Contentions); Rule 4-3.3 (Candor to the Tribunal); Rule 4-3.4 (Fairness to Opposing Party and Counsel); Rule 4-8.4(c) (Misconduct: A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); and Rule 4-8.4(d) (Misconduct: conduct prejudicial to the administration of justice).

B. In The Florida Bar File No. 2021-10,376 (6D), respondent represented the plaintiffs in Alachua County, Circuit Court, Case No. 01-2020-CA-2497, Eva Areias and Frank Perrulli, v. Duetsche Bank National Trust Company ("DBNTC"). Respondent filed a complaint and demand for jury trial and prepared a summons for the Alachua County Clerk of court to issue to Deutsche Bank at 60 Wall Street, New York City, New York, 10005. On October 6, 2020, respondent filed the process server's affidavit of service stating that Deutsche Bank was served at CT Corp, 28 Liberty Street, NY, NY 10005. On October 15, 2020, respondent filed a motion for clerk's default and a Motion for Final Summary Judgment after Default stating that there were no genuine issues of material facts and seeking treble damages.

On December 3, 2020, respondent appeared for a telephonic hearing on the Motion for Summary Judgment after Default. Neither the plaintiffs nor the defendants appeared at the hearing. The court asked respondent whether venue/jurisdiction was appropriate as the real property at issue was not located in Alachua County, and service of process was perfected by serving a mailroom employee for CT Corporation in New York. According to the court, respondent stated that CT Corporation was the registered agent for Deutsche Bank, and that venue was proper in Alachua County because a contractual provision allowed the plaintiffs to select venue. Respondent did not provide the court with a copy of the Deutsche Bank contract.

On December 10, 2020, the court entered an Order Requiring Additional Documentation Prior to Ruling on Motion for Summary Judgment after Default. Respondent failed to comply with the court's order dated December 10, 2020. On December 17, 2020, the judge entered an amended order that placed the plaintiffs on notice of potential dismissal for lack of service of process. On that same date, respondent filed a Notice of Voluntary Dismissal Without Prejudice. Subsequent to the dismissal, the judge received a letter from CT Corporation, indicating that CT Corporation was not the registered agent for an entity named Deutsche Bank National Trust Company.

In his response to the bar complaint, respondent states there must have been a miscommunication between himself and the judge. He denies informing the court that CT Corporation was the registered

agent for Deutsche Bank National Trust Company. Respondent also attached to his response affidavits from two process servers, attesting to the fact that Deutsche Bank National Trust Company was properly served by serving CT Corporation at the New York address referenced in the summons. Respondent makes a distinction between informing the court that CT Corporation was authorized to accept service on behalf of Deutsche Bank National Trust Company versus representing that CT Corporation was the registered agent for Deutsche Bank National Trust Company.

Respondent admits by reason of the foregoing he has violated the following Rules Regulating The Florida Bar: Rule 4-3.1 (Meritorious Claims and Contentions); Rule 4-3.3 (Candor to the Tribunal); Rule 4-3.4 (Fairness to Opposing Party and Counsel); Rule 4-8.4(a) (Misconduct); 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: conduct prejudicial to the administration of justice).

C. In The Florida Bar File No. 2021-10,336 (6D), respondent was counsel for co-defendants in a foreclosure case involving a lis pendens in Wells Fargo Bank, N.A. v. Fritz, et al., case no. 2016-CA-2787 ("*Wells Fargo v. Fritz*") filed on September 24, 2016. Respondent agreed to represent Michael and Katy Fritz, the borrowers of the mortgage on the property, while representing HOVA as the new owner of the property subject to the mortgage. Richard Howell ("Howell") and Denise Denova ("Denova") were owners of HOVA and longtime clients and friends of respondent. After the Fritzes deeded their home to HOVA, Denova obtained a power of attorney and referred the Fritzes to respondent.

On June 22, 2017, respondent entered into a contingency fee agreement that Denova signed as power of attorney for the Fritzes. On January 10, 2019, respondent filed a motion for attorney fees on behalf of the Fritzes and subsequently a hearing was held on respondent's motion. Respondent testified at the hearing on the motion. On December 20, 2020, the judge entered an order on defendants' motion for attorney's fees and costs. The order detailed the court's concerns regarding what it perceived as respondent's evasive testimony during the hearing and respondent's billing

practices. The court found respondent's billing entries were duplicative, inflated, and not credible. The court's order further stated, "…the [c]ourt has concerns for the conflict of interest when one client (owner HOVA) benefits from delay, but the other clients (the Fritzes) are potentially harmed by delay because the note liability continues to grow…[t]he [c]ourt has concerns that Denise Denova, who has some undisclosed affiliation with HOVA, obtained a power of attorney from the Fritzes and was meeting with Mr. Segal on a regular basis allegedly on their behalf. Looking at the results obtained through the lens of the Fritzes who had divested themselves of any ownership, the [c]ourt sees little benefit of a dismissal to the Fritzes. It may have been a great result for Mr. Segal's other client, HOVA, but not necessarily for the Fritzes."

With respect to the conflict of interest, respondent contends that both the Fritzes and HOVA had the same direct interest in the litigation; namely, prevailing in their defense of Wells Fargo's foreclosure action. In respondent's view, the fact that the Fritzes no longer lived in the property did not change that fact. Respondent further notes that while the trial judge is correct that the Fritzes' liability under the underlying promissory note would continue to increase during the pendency of the litigation, that fact does not alter the fact that the best outcome for the Fritzes was the same as the best outcome for HOVA: dismissal of the foreclosure action, which is exactly what happened.

Respondent also noted in his response that although there is a remote possibility a deficiency judgment could result following a foreclosure sale for which deficiency judgment only the Fritzes would be liable, that possibility, standing alone, should not create a conflict. Respondent contends he has handled hundreds of foreclosure defense actions in the past 13 years and during that span, he has had only one case where a credit union pursued a deficiency judgment against a borrower. For purposes of Rule 4-1.7(a)(2), respondent does not feel such a remote possibility rises to the level of creating a "substantial risk" that he would have been "materially limited" in his representation of either HOVA or the Fritzes. However, respondent admits it would have been best practice to advise the clients of the remote possibility and obtained written consents to the representation.

Respondent admits by reason of the foregoing he has violated the following Rules Regulating The Florida Bar: Rules 4-1.7 (Conflict of Interest); 4-3.3 (Candor to the Tribunal); 4-3.4 (Fairness to Opposing Party and Counsel); 4-8.4(c) (Misconduct: A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); 4-8.4(d) (Misconduct: conduct prejudicial to the administration of justice).

8. Respondent offers the following in mitigation, under Florida Rules for Imposing Lawyer Sanctions, Standard 3.3:

(1) absence of a prior disciplinary record;

(2) full and free disclosure to the bar or cooperative attitude toward the proceedings;

(7) character or reputation. While taking issue with respondent's substantive position in response to the complaint he filed against respondent, one of the complaining judges remarked that respondent is "an exceptional advocate for his clients;" "very knowledgeable in the law;" "has always been very thorough in his preparation;" "has demonstrated a command of the facts and evidence" and "serves his clients well . . . . ."

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

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

11. 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.

12. 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 $2426.63. 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.

13. 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 will reflect adversely on any other bar disciplinary matter in which respondent is involved.

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

Dated this 22nd day of June, 2023.

Lee Segal, Respondent
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Dated this 22nd day of June, 2023.

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Dated this 23rd day of June, 2023.

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