IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

MICHAEL ANTHONY SARACCO,

Respondent.

_____/

Supreme Court Case No. SC-

The Florida Bar File No. 2020-30,193 (18B)

CONDITIONAL GUILTY PLEA FOR CONSENT JUDGMENT

COMES NOW, the undersigned respondent, Michael Anthony Saracco, 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. Respondent currently is the subject of a Florida Bar disciplinary matter which has been assigned The Florida Bar File No. 2020-30,193 (18B).

2. As to The Florida Bar File No. 2020-30,193 (18B), there has been a finding of probable cause by the Eighteenth Judicial Circuit Grievance Committee "B."

3. Respondent is acting freely and voluntarily in this matter and tenders this Plea without fear or threat of coercion. Respondent is not represented in this matter.

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

A. Forty-five-day suspension with automatic reinstatement at the end of the period of suspension as provided in R. Reg. Fla. Bar 3-5.1(e).

B. Completion of an office procedures and record-keeping analysis by and under the direction of the Diversion/Discipline Consultation Service (DDCS). Respondent shall contact DDCS within 30 days of the court's order approving the consent judgment in order to schedule a DDCS review. The DDCS analysis shall consist of, at a minimum, an initial review and a final review confirming compliance with any recommendations made by DDCS. DDCS may require additional interviews or reviews as it may, in its sole discretion, deem necessary or advisable. Respondent shall comply with and implement, at respondent's sole cost and expense, all recommendations made by DDCS within 60 days of the recommendation. DDCS will provide the Lawyer Regulation Department of The Florida Bar with status reports as to ordered analysis.

C. Payment of the bar's discipline costs.

5. 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.

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

A. On or about May 31, 2018, Mr. Brian Shropshire consulted with respondent regarding potential legal action against Bank of America for failing to terminate private mortgage insurance in accordance with the terms of Mr. Shropshire's mortgage agreement. Respondent advised Mr. Shropshire that the potential lawsuit could be filed in federal court.

B. On or about July 7, 2018, Mr. Brian Shropshire paid respondent $275.00 to contact Bank of America and to obtain Mr. Shropshire's mortgage file in order to evaluate his potential legal claims.

C. On or about October 29, 2018, Mr. Shropshire paid respondent a flat fee of $2,500.00 to file the recommended lawsuit against Bank of America regarding its conduct in failing to terminate the private mortgage insurance.

D. On November 26, 2018, respondent filed the complaint against Bank of America in the Circuit Court of the Eighteenth Judicial Circuit in and for Brevard County, Florida. Mr. Shropshire alleges that respondent previously advised him that the complaint would be filed in federal court.

E. In the complaint, respondent inadvertently stated that the amount in controversy was in excess of $15,000,000.00 rather than $15,000.00.

F. On December 27, 2018, Bank of America successfully removed the case to federal court.

G. On January 2, 2018, Bank of America filed a motion to dismiss the complaint. Respondent did not file a response to the motion to dismiss.

H. On January 17, 2018, the court issued an order to show cause to respondent for his failure to respond to Bank of America's motion to dismiss. The court directed respondent to submit his response to the order to show cause along with his response to the motion to dismiss by January 18, 2018. In its order, the court stated that failure to timely respond would result in granting the motion as unopposed, thereby dismissing the complaint with prejudice.

I. Respondent did not file a response to the court's order to show cause and the complaint was dismissed without prejudice on January 22, 2019.

J. Mr. Shropshire alleges that respondent failed to advise him of the order to show cause and the dismissal of the complaint. Mr. Shropshire alleges that he discovered that the complaint had been dismissed and requested that respondent file a new complaint at respondent's expense.

K. On May 3, 2019, respondent filed a motion to reopen the case which was denied by the court with directions to initiate a new action should respondent wish to pursue the claim.

L. On May 8, 2019, respondent filed a new complaint in federal court, which was later amended on May 13, 2019.

M. On August 2, 2019, Bank of America moved to dismiss the complaint. The court permitted respondent to file an amended complaint to address the deficiencies in the complaint identified by Bank of America. Respondent filed an amended complaint on August 29, 2019.

N. Thereafter, respondent filed a motion to withdraw from the case which was granted by the court on September 6, 2019. Respondent issued Mr. Shropshire a full refund of the legal fee paid.

O. Mr. Shropshire then hired new counsel, who successfully filed a second amended complaint to preserve Mr. Shropshire's claim.

7. Wherefore, by reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar:

A. 4-1.1 A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

B. 4-1.2(a) Subject to subdivisions (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation, and, as required by rule 4-1.4, shall reasonably consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall

abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial, and whether the client will testify.

C. 4-1.3 A lawyer shall act with reasonable diligence and promptness in representing a client.

D. 4-1.4 (a) A lawyer shall: (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in terminology, is required by these rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests for information; and (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows or reasonably should know that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

E. 4-1.4(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

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 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.

10. Respondent agrees to eliminate all indicia of respondent's status as an attorney on 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.

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 $1,619.00. 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 also is evidence of good faith and fiscal responsibility. Respondent understands that failure to pay the costs of this proceeding or restitution will reflect adversely on any other bar disciplinary matter in which respondent is involved.

13. In mitigation, respondent had no dishonest or selfish motive [Florida's Standards for Imposing Lawyer Sanctions 3.3(b)(2)], made a timely good faith effort to make restitution or to rectify the consequences of the misconduct [Florida's Standards for Imposing Lawyer Sanctions 3.3(b)(4)], and fully cooperated with the bar in these proceedings [Florida's Standards for Imposing Lawyer Sanctions 3.3(b)(5)].

14. In aggravation, respondent has a prior disciplinary history [Florida's Standards for Imposing Lawyer Sanctions 3.2(b)(1)]. The misconduct giving rise to respondent's prior discipline in SC19-1217 and SC18-1684 occurred during the same timeframe, when respondent was inexperienced in the practice of law. In addition, the misconduct giving rise to respondent's current disciplinary matter occurred during the pendency of the disciplinary matter in SC19-1217. Thus, respondent did not have the benefit of the rehabilitation recommended in his prior discipline cases during the majority of his representation of Mr. Shropshire. See TFB v. Shoureas, 913 So.2d 554, 559 (Fla. 2005).

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

Dated this 26th day of October, 2020.

Michael Anthony Saracco
Respondent
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Dated this 27th day of October, 2020.

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