

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Supreme Court Case No.

Complainant,

The Florida Bar File Nos.

v.

2014-70,747(11J)

2015-70,366(11J)

MORDECHAI L. BREIER,

Respondent.

CONDITIONAL GUILTY PLEA FOR CONSENT JUDGMENT

COMES NOW, the undersigned Respondent, Mordechai L. Breier, and tenders 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 two Florida Bar disciplinary matters which have been assigned The Florida Bar File Nos. 2014-70,747(11J) and 2015-70,366(11J). As to both matters, Eleventh Judicial Circuit Grievance Committee "J" has made a finding of probable cause.
3. Respondent is acting freely and voluntarily in this matter, and tenders this Plea without fear or threat of coercion. Respondent is represented in this matter.

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

A. Thirty-day suspension from the practice of law;

B. Upon automatic reinstatement, one year of probation. During this term of probation, Respondent agrees to retain, at Respondent's expense, the services of a certified public accountant acceptable to The Florida Bar to review Respondent's trust account records on a monthly basis during the term of probation. Quarterly statements shall be prepared by the certified public accountant for review by The Florida Bar. Respondent is responsible for submission of the quarterly reports to the headquarters office of The Florida Bar. The quarters are March 31, June 30, September 30 and December 31. Statements shall specify whether respondent is in compliance with the Rules Regulating Trust Accounts and shall include the monthly reconciliations, copies of the bank statements of respondent's trust accounts and a list of clients with the individual client trust account balances. The reports are due 15 days following the end of each quarter.

C. Respondent will pay a quarterly monitoring fee of \$100.00 to The Florida Bar. All quarterly monitoring fees must be remitted no later than the end of each respective quarter in which the monitoring fee is due. All

fees must be paid to the Bar's headquarters office in Tallahassee. Failure to pay shall be deemed cause to revoke probation.

5. Respondent acknowledges that, unless waived or modified by the Court on motion of Respondent, the Court's disposition 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 and rules provide the basis for Respondent's guilty plea and for the discipline to be imposed in this matter:

A. Respondent, through his law firm—Consumer Law Office, P.A.—represented homeowners in first party insurance claims.

B. In The Florida Bar File No. 2014-70,747 (11J), Respondent represented Marie Paul ("Paul") in connection with a property damage claim against United Property and Casualty. In The Florida Bar File No. 2015-70,366 (11J), Respondent represented Monette McMillian ("McMillan") in connection with a property damage claim against Citizens Property Insurance. Both Paul and McMillan were dissatisfied with Respondent's services and filed grievances with the Bar.

C. As a part of the Bar's investigation, it subpoenaed client files and trust accounting records pertaining to Paul and McMillan's cases, along with several other first-party property insurance claims handled by Respondent's firm.

D. The Bar's review of the responsive documents revealed the following:

E. Respondent occasionally utilized the services of individual public adjusters or public adjusting companies. One of those companies was F&F Consulting which, based upon a review of Respondent's client ledger cards, generally received fees from Respondent as follows: 1/3 of the total amount claimed in attorney's fees was paid to Respondent and the remaining 2/3 went to F&F Consulting.

F. In Paul's case, for example, F&F Consulting received 2/3 of Respondent's 33 1/3% contingency fee.¹

G. On several occasions where a second claim check was received from an insurance company, the entire amount of the attorney's fees from the second check were paid to F&F Consulting.

H. In instances where Respondent utilized a public adjusting company, the closing statements provided to clients often did not reflect the

¹ Respondent ultimately reduced his attorney's fees to 20%.

actual percentage or dollar amount of fees paid to the adjuster. Instead, the statements simply reflected that Respondent was receiving 33 1/3% of the total recovery.

I. In addition, the Bar discovered that Respondent had, at one point in time, an overdrawn balance in 17 specific client ledger cards. Respondent subsequently deposited funds into the trust account to correct the negative balance.

J. There is no indication that the overdrawn balances were the result of misappropriation or defalcation. Rather, it appears that unintentional bookkeeping mistakes caused the overdrafts.

K. By virtue of the foregoing, Respondent has violated Rule Regulating The Florida Bar 4-5.4(a) (Sharing Fees with Nonlawyers) and Rule Regulating Trust Accounts 5-1.2 (Trust Accounting Records and Procedures).

7. The Respondent offers the following in mitigation of the foregoing (All references are to the Fla. Standards for Imposing Lawyer Sanctions, Standard 9.3):

- a) absence of a prior disciplinary record;
- b) absence of a dishonest or selfish motive;

d) timely good faith effort to make restitution or to rectify consequences of misconduct; (fully restored all funds to trust)

e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings;

f) inexperience in the practice of law at the time of the misconduct;

g) otherwise good character and reputation;

j) interim rehabilitation (Already hired CPA to assist in trust account and meeting with CPA on a monthly basis);

l) remorse;

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. 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 \$6,095.20. 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.

11. Respondent acknowledges the obligation to pay the costs of this proceeding (and any agreed restitution) 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 or restitution will reflect adversely on any other bar disciplinary matter in which respondent is involved.

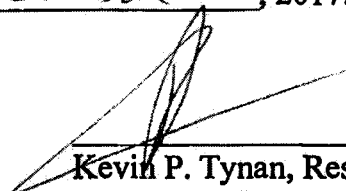
12. If this plea is approved, and restitution is owed, if the person to whom restitution is owed cannot be located after a diligent search, respondent shall execute an affidavit of diligent search and provide same to The Florida Bar and shall pay the full amount of the restitution to the Clients' Security Fund of The Florida Bar within 30 days of the date of the affidavit of diligent search.

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


Dated this 25 day of October, 2017.


Mordechai L. Breier, Respondent
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Dated this 31st day of OCTOBER, 2017.


Kevin P. Tynan, Respondent's Counsel
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Dated this 6 day of November, 2017.


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