

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

v.

MARIO SERRALTA,
Respondent.

Supreme Court Case
No. SC20-1736

The Florida Bar File
No. 2018-70,651 (11M)

REPORT OF REFEREE ACCEPTING CONSENT JUDGMENT

I. **SUMMARY OF PROCEEDINGS**

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rule 3-7.6, Rules of Discipline, the following proceedings occurred:

On November 24, 2020, The Florida Bar filed its Complaint against Respondent as well as its Request for Admissions in these proceedings. All of the aforementioned pleadings, responses thereto, exhibits received in evidence, and this Report constitute the record in this case and are forwarded to the Supreme Court of Florida.

II. **FINDINGS OF FACT**

Jurisdictional Statement. Respondent is, and at all times mentioned during this investigation was, a member of The Florida Bar, subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

Narrative Summary of Case. The following allegations and rules provide the basis for respondent's guilty plea and for the discipline to be imposed in this matter, which I hereby accept and adopt as the findings of fact in this cause, to wit:

A. On May 9, 2014, Ramon Schotbough retained attorney Jose Francisco in a personal injury claim.

B. Jose Francisco filed a Complaint on behalf of Mr. Schotbough solely against Simply Healthcare Plans, Inc.

C. On or around July 14, 2014, Mr. Schotbough retained Respondent's law firm and discharged Mr. Francisco by a handwritten letter on Respondent's law firm's letterhead.

D. Shortly thereafter, on July 14, 2014, Mr. Francisco acknowledged the discharge and requested a substitution of counsel from Respondent.

E. On August 1, 2014, Respondent filed a Notice of Appearance and included Mr. Francisco in the certificate of service.

F. On August 5, 2014, Mr. Francisco sent Respondent a Substitution of Counsel and a letter requesting that his charging lien be protected.

G. Respondent asserts he never saw the August 5, 2014, letter from Mr. Francisco.

H. On August 13, 2014, after Mr. Francisco was terminated as counsel for plaintiff, Respondent filed an Amended Complaint on behalf of Mr. Schotbough adding Strategic Health Services, LLC, as a defendant in the lawsuit styled *Ramon Schotbough v. Simply Healthcare Plans Inc. and Strategic Health Services, LLC*, case number 2014-018009-CA-01 (Schotbough case).

I. On August 26, 2014, Simply Healthcare Plans, Inc., was dismissed as a defendant in the Schotbough case.

J. On January 29, 2015, Mr. Francisco filed the first Notice of Charging Lien in the Schotbough case. On July 1, 2015, Mr. Francisco filed a second Notice of Charging Lien with the court. Both Respondent's paralegal, Joanna Blanch (who receives pleadings served in all of Respondent's cases) and Respondent testified in the civil case that they never received nor saw the charging lien at issue.

K. On October 15, 2015, Respondent reached a settlement for \$222,500.00 with Strategic Healthcare Services, LLC, the new defendant brought into the Schotbough matter by Respondent.

L. On October 23, 2015, counsel for Defendant Strategic Health Services, LLC, (not Respondent) electronically filed the Notice of Voluntary Dismissal which had been signed by Respondent. Opposing counsel (not Respondent) deselected Jose M. Francisco from the electronic service list when the Voluntary Dismissal was filed with the court.

M. On October 23, 2015, Respondent disbursed the settlement funds without resolving Mr. Francisco's charging lien.

N. On December 8, 2016, Mr. Francisco filed a Motion to Liquidate and Adjudicate Charging Lien Against Strategic Health, Alan Friedman, and Law Offices of Jason Weissman.

O. Once he was aware of the lien, Respondent reached out to Mr. Francisco's office in writing and attempted to resolve the lien. This communication occurred approximately one day after Mr. Francisco's filing.

P. When Respondent was later added as a potential obligor in Jose Francisco's Amended Motion to Liquidate and Adjudicate

Charging Lien, Sanctions, and Attorneys Fees and Costs filed on April 2, 2017, Respondent again made several attempts to determine the amount owed on the charging lien, but no response was forthcoming.

Q. On June 5, 2017, and August 28, 2017, the court held hearings on Charging Lienor's Motion to Adjudicate Charging Lien.

R. Respondent maintained that prior to December 8, 2016, he was not personally aware of the lien or the prior attorney. He also maintained that he relied upon his staff to keep track of all potential liens, including any charging liens from prior counsel, on all his cases. On April 16, 2018, the court issued an order (Order 1) granting Mr. Francisco's Amended Motion to Liquidate and Adjudicate Charging Lien, Sanctions, and Attorney's Fees and Costs.

S. Subsequently, the case was transferred to Judge Alan Fine, and the court held a hearing on December 17, 2019, to determine the amount of attorney's fees and costs pursuant to the April 16, 2018 order.

T. Although Judge Fine did not comment on events taking place prior to December 8, 2016, he found that some of the findings

made by the prior judge were not supported by the record made at the June and August 2017 hearings.

U. Judge Fine made findings on the record and determined that, if Respondent had been provided with the amount owed on the lien when he approached Mr. Francisco, the lien would have been resolved in a timely manner.

V. Following the December 17, 2019, hearing, the parties resolved the matter, and Judge Fine entered an agreed-upon order (Order 2) vacating Order 1 entered by the prior judge, *nunc pro tunc* to April 6, 2018, the date of entry of Order 1.

W. Significantly, after the finding of Probable Cause, two pivotal events occurred, together directly impacting the bases for the Probable Cause determination.

- a. Upon a stipulation between the parties in the civil case, the successor judge in the civil case entered a new Order (Order 2), vacating Order 1 *nunc pro tunc* to the original date of entry; and
- b. Upon review of the evidence and contrary to the finding of the prior judge in Order 1, it was proven that Respondent did not deselect plaintiff's prior counsel from service when the

Notice of Dismissal was filed as the document was, in fact, filed by defendant's counsel.

X. In respondent's Responses to The Florida Bar's Requests for Admission, respondent admits he violated Rule 4-5.3 (Responsibilities Regarding Nonlawyer Assistants) of the Rules Regulating The Florida Bar, stating that he relied on his assistants to be responsible for gathering all costs on the file, including any liens, and/or referral fees.

Y. Respondent has since taken corrective action to ensure he is aware of all charging liens when such liens are filed and that all charging liens are promptly paid in accordance with Florida law and the Rules Regulating The Florida Bar.

Z. Respondent admits that his reliance on support staff contributed to the issue regarding his lack of knowledge of the charging lien of Mr. Francisco.

AA. Although Respondent's failure to properly supervise his assistants caused his lack of knowledge concerning the charging lien and resulted in the money held in and disbursed from the trust account not being handled properly, ultimately, the matter was properly resolved.

BB. By virtue of the foregoing, respondent admits he has violated Rule 4-5.3 of the Rules Regulating The Florida Bar.

CC. By virtue of the foregoing, respondent admits his negligence resulted in a violation of Rule 5-1.1(e) of the Rules Regulating The Florida Bar.

III. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

In mitigation, Respondent has no prior discipline [Florida Standards for Imposing Lawyer Sanctions 3.3(b)(1)]; he did not have a dishonest or selfish motive [3.3(b)(2)]; he made timely good faith efforts to make restitution or to rectify the consequences of the misconduct [3.3(b)(4)]; he was forthcoming with the Bar [3.3(b)(5)]; he has imposed remedial measures to prevent similar violations in the future, showing interim rehabilitation [3.3(b)(10)]; he suffered the imposition of other penalties or sanctions in the civil case [3.3(b)(11)]; and he expressed remorse and freely admitted the misconduct [3.3(b)(12)].

In aggravation, Respondent has substantial experience in the practice of law, admitted in 1999 [3.2(b)(9)].

IV. CASE LAW

I considered the following case law prior to recommending discipline:

In *The Florida Bar v. Pinaluga*, SC13-1021, 2013 WL 6220113 (Fla. Nov. 21, 2013), the court approved a consent judgment for a public reprimand where attorney failed to hold any portion of the settlement in his trust account due to a dispute but instead remitted the funds to his client per his instructions. Pinaluga was aware of the existence of an agreement between his client and a doctor, agreeing that any money owed to the doctor would be paid from the settlement of the personal injury case. Once the settlement arrived, Pinaluga remitted the funds to his client, per his instructions, and did not hold any portion of the settlement in his trust account. Pinaluga was found in violation of R. Regulating Fla. B. 5-1.1(e) (notice, delivery and accounting of trust funds) and 5-1.1(f) (disputed ownership of trust funds).

In The Florida Bar v. Wagner, 212 So. 2d 770 (Fla. 1968), the court held that a public reprimand was appropriate rather than the 30-day

suspension recommended by the referee, where there were no findings of commingling, misappropriation, dishonest treatment of the client, or interfering with administration of justice, but in two cases the respondent was found to have failed to promptly disburse trust funds to pay certain medical bills and expert witness fee. The bills were ultimately paid but only after the investigation was initiated.

In *The Florida Bar v. Tropp*, SC18-469, 2018 WL 1773422 (Fla. Apr. 12, 2018), the court approved a consent judgment before the referee for a ten-day suspension where attorney failed to properly disburse disputed settlement funds held in trust. Attorney settled his client's negligence suit in the amount of \$62,500. Before such settlement, the insurance company filed a Notice of Lien for Payment of Compensation and Medical Benefits in the negligence lawsuit, and a copy was served on Tropp. After receipt of the settlement funds, Tropp failed to disburse payment to the insurance company, despite being on notice of the lien. Tropp and his client were found jointly and severally liable to the insurance company.

V. RECOMMENDATIONS AS TO GUILT

I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar:

- 4-5.3 (Responsibilities Regarding Nonlawyer Assistants); and
- 5-1.1(e) (Notice of Receipt of Trust Funds; Delivery; Accounting)

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that he be disciplined by:

- A. Public Reprimand by publication;
- B. Within six months of the acceptance of this consent judgment, respondent shall attend and complete Ethics School and is responsible for the \$750.00 fee associated with the program;
- C. Payment of the disciplinary costs.

PERSONAL HISTORY AND PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-7.6(m)(1)(D), I considered the following personal history of Respondent, to wit:

Age: 57

Date admitted to the Bar: April 12, 1999

Prior Discipline: No disciplinary history

VII. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

I have reviewed The Florida Bar's Motion to Assess Costs and find the following costs were reasonably incurred by The Florida Bar:

Administrative fee.....\$1,250.00

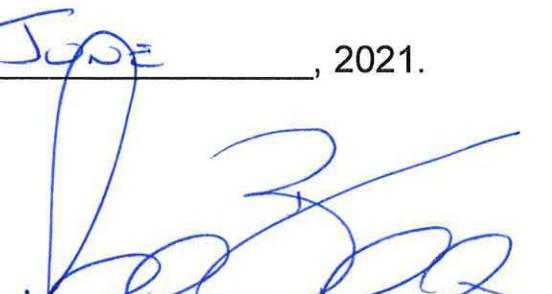
Court reporter's costs (attendance fee for Hearing held on January 21, 2021).....\$90.00

Court reporter's costs (attendance fee for Hearing held on April 13, 2021).....\$90.00

TOTAL \$1,430.00

It is recommended that such costs be charged to Respondent and that interest at the statutory rate shall accrue and that should such cost judgment not be satisfied within thirty days of said judgment becoming final, Respondent shall be deemed delinquent and ineligible to practice law, pursuant to R. Regulating Fla. Bar 1-3.6, unless otherwise deferred by the Board of Governors of The Florida Bar.

Dated this 07 day of June, 2021.



Honorable Michael Barket, Referee

MICHAEL G. BARKET
COUNTY COURT JUDGE

Dade County Courthouse
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Miami, Florida 33130

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