IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

MARK P. STOPA,

Respondent.
_____/

Supreme Court Case Number: SC13-1886

The Florida Bar File Numbers: 2012-11,175(12B)
2013-10,440(12B)

REPORT OF REFEREE ACCEPTING CONSENT JUDGMENT

I. Summary of Proceedings: The undersigned was duly appointed as Referee in these proceedings. The parties hereto have agreed to a stipulated resolution, which I recommend that the Court accept.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: Leonard Evans Clark
For Respondent: Scott Kevork Tozian

Respondent participated fully in this proceeding.

II. Findings of Fact: The parties stipulated to the following facts: Respondent is and, at all relevant times, was a member of The Florida Bar, subject to the jurisdiction of the Supreme Court of Florida.

A. TFB File No. 2012-11,175(12B):

Respondent represented Mr. Barry and Ms. June Schneider in a foreclosure matter in Polk County, Florida. On April 18, 2012, Respondent's office filed a Motion for Reconsideration of Continuance or Denial of Leave to Amend, requesting a continuance to permit his client to amend an answer that the client had previously filed *pro se*. Respondent drafted the motion by oral dictation without reflection and did not review or revise the work product once it was typed. Instead, an associate attorney in Respondent's firm signed the motion on Respondent's

behalf. As a result, Respondent failed to edit and remove the inappropriate language before it was filed with the court. In the motion, Respondent impugned the integrity of the Judge.

B. TFB File No. 2013-10,440(12B):

Respondent represented a Limited Liability Company ("the L.L.C."), in a third-party purchase of real property. The prior owner of the property purchased by the L.L.C. expressed the desire to reacquire the property. As a result, Respondent's client authorized him to reach an agreement with the prior owner, whereby several post-dated checks were provided to the L.L.C. in order for the prior owner to, once again, become the owner of the property. Once the checks cleared, the L.L.C. would deed the property back to the prior owner. During the time the post-dated checks were being held for presentation to the bank, the prior owner failed to pay homeowner's association dues, despite his agreement to do so, and the homeowner's association took action against the L.L.C., including adding late charges to their account.

Respondent made numerous attempts to contact the prior owner without success, including emails, a letter, and personal visits by a property manager. Respondent drafted a Motion for Writ of Possession which formed the basis for The Florida Bar's Inquiry/Complaint. The motion was a form that is regularly used in foreclosure cases that do not require a hearing. As the foreclosure judgment had already been entered, the Writ of Possession is the vehicle by which the prior owner is removed from possession. Respondent was aware that if the prior owner was still living in the home, the sheriff would post a 24-hour notice which would, undoubtedly, prompt the prior owner to contact Respondent, at which point they could make arrangements to address the homeowner's association dues issue. Instead of contacting Respondent upon receiving the 24-hour notice, the prior owner wrote a letter to the judge in the matter, which put the sequence of events in motion for the judge vacating the writ and the grievance being filed against Respondent.

During this time, Respondent had subsequently settled the homeowner's association dues issue with the prior owner, the L.L.C. had provided the deed to the prior owner, and the prior owner was never removed from the home. The judge's order was subsequently vacated on January 22, 2013, by Judge William G. Sestak, based on the Stipulation between Respondent and the prior owner's

counsel, who agreed in the Stipulation that Respondent had not made any misrepresentations.

III. Recommendation as to Guilt: In accordance with the parties' proposed resolution, I recommend that Respondent be found guilty of violating Rule 3-4.3 (Misconduct and minor misconduct), Rules Regulating The Florida Bar.

IV. Recommended Discipline: In accordance with the Conditional Guilty Plea for Consent Judgment, I recommend that Respondent be publicly reprimanded, attend Ethics School, and be required to have a psychological evaluation administered by James Edgar, M.D., to identify issues related to stress or any other issues. Should the evaluation indicate the need for treatment, Respondent agrees to follow the recommendations of Dr. Edgar. In such case, Dr. Edgar's report will be provided to the Florida Lawyer's Assistance (FLA) Program for monitoring. Should a rehabilitative contract result from Dr. Edgar's evaluation, Respondent agrees to be placed on probation, not to exceed a three-year time-period, and sign an F.L.A. contract. Respondent agrees to pay all fees associated with F.L.A. and will abide by all recommendations made by Dr. Edgar and the conditions set forth in the F.L.A. contract.

I find that this discipline is appropriate based on:

The Florida Bar v. Ray, 797 So. 2d 556 (Fla. 2001). In Ray, a public reprimand was issued where the respondent wrote a number of letters to the chief judge, questioning "the veracity and integrity" of the judge the respondent had appeared before. Id. at 557. The referee determined that these letters had no reasonable basis in fact and were "based on statements that the judge never made." Id. at 559. As to the respondent's allegations of the judge's unfairness, the referee "found that there was 'nothing that transpired in that hearing that would justify such outrageously false accusations,' and that the evidence Ray relied upon in making the statement 'barely even qualifies as sketchy.' The referee concluded that Ray's statements were made 'with a reckless disregard for the truth.'" Id. at 559.

The Florida Bar v. Tropp, 112 So. 3d 101 (Fla. 2013). In Tropp, a public reprimand was issued where the respondent "misrepresent[ed] a material fact . . . to the court." Id. at 102. Respondent's "allegation lacked candor and was designed

to mislead the court—and, further, wrongfully and unfairly impugned the integrity, objectivity, and fairness of the trial judge." Id. at 102 (Labarga, J. dissenting).

V. Personal History and Past Disciplinary Record: In recommending approval of the parties' proposed resolution, I considered the following personal history and prior disciplinary record of Respondent:

Age: 37
Date Admitted to Bar: April 23, 2002
Prior Discipline: None
Respondent is not certified in any area of practice.

Standards for Imposing Lawyer Sanctions: Aggravating factor includes 9.22(d) (multiple offenses); and mitigating factors include 9.32(a) (absence of a prior disciplinary record), 9.32(b) (absence of a dishonest or selfish motive) – (The parties agree that the misconduct was not calculated to benefit Respondent personally), and 9.32(g) (character or reputation) – (The parties have stipulated that Respondent was prepared to offer several character witnesses including judges, other attorneys, and clients).

VI. Costs: I find the following costs were reasonably incurred by The Florida Bar:

Administrative Costs	pursuant to Rule 3-7.6(q)(1)(I)	$1,250.00
Court Reporters' Fees		$ 729.25
03/25/13	Grievance Committee Hearing	
	Transcript $494.25	
	Appearance Fee $150.00	
	$644.25	
02/14/14	Pretrial	
	Appearance Fee $ 85.00	
	$729.25	
TOTAL		**$1,979.25**

I recommended that the foregoing itemized costs be charged to Respondent, and that interest at the statutory rate accrue and become payable beginning 30 days after the judgment in this case becomes final, unless a waiver is granted by the Board of Governors of The Florida Bar.

Dated this 28 day of May 2014.

/s/

Honorable Greg A. Tynan, Referee

Original to Supreme Court with Referee's original file.

Copies of this Report of Referee only to:

Leonard Evans Clark, Esquire, Bar Counsel, The Florida Bar, 4200 George J. Bean Parkway, Suite 2580, Tampa, Florida 33607-1496

Scott Kevork Tozian, Esquire, 109 North Brush Street, Suite 200, Tampa, Florida 33602, Counsel for Respondent

Adria Quintela, Esquire, Staff Counsel, The Florida Bar, 1300 Concord Terrace, Suite 130, Sunrise, Florida 33323-2899