IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

MARK P. STOPA,

Respondent.

_____/

Supreme Court Case
No. SC-

The Florida Bar File
No. 2012-11,175 (12B)
2013-10,440 (12B)

COMPLAINT

The Florida Bar, complainant, files this Complaint against Mark P. Stopa, respondent, pursuant to the Rules Regulating The Florida Bar and alleges:

1. Respondent is, and at all times mentioned in the complaint was, a member of The Florida Bar, admitted on April 23, 2002, and is subject to the jurisdiction of the Supreme Court of Florida.

2. Respondent resided and practiced law in several counties in Florida including Pinellas; Polk; and Pasco, at all times material.

Count I
TFB File No. 2012-11,175 (12B)
(The Florida Bar)

3. Paragraph 1 is realleged and incorporated herein by reference.

4. Respondent represented the defendants, Barry and June Schneider, in a foreclosure matter in Polk County, Florida.

5. At a hearing on or about March 19, 2012, Respondent asked the judge for leave to amend his client's *pro se* Answer, and the judge denied Respondent's request and set the case for trial on April 17, 2012.

6. At trial on April 17, 2012, in which Respondent's associate appeared on behalf of the defendants, the judge granted the plaintiff's request for a continuance of the trial.

7. On or about April 18, 2012, Respondent's law office filed a motion drafted by Respondent entitled Motion for Reconsideration of Continuance or Denial of Leave to Amend.

8. In the motion, Respondent impugned the integrity of the Judge. The motion is attached hereto as **"Exhibit A"**.

9. By impugning the integrity of the judge, Respondent violated Rule 4-8.2(a) and Rule 4-8.4(d), Rules Regulating The Florida Bar.

10. On March 25, 2013, the Twelfth Judicial Circuit Grievance Committee B found probable cause to file this complaint pursuant to Rule 3-7.4, of the Rules Regulating The Florida Bar, and this complaint has been approved by the presiding member of that committee.

11. By reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: **Rule 4-8.2(a)** (Impugning Qualifications and Integrity of Judges or Other Officers); and **Rule 4-8.4(d)** (A lawyer shall not

engage in conduct in connection with the practice of law that is prejudicial to the administration of justice).

Count II
TFB File No. 2013-10,440 (12B)
(The Florida Bar)

12. Paragraph 1 is realleged and incorporated herein by reference.

13. Respondent represented Abpaymar, LLC ("Abpaymar").

14. In January 2012, Abpaymar purchased a home at a foreclosure sale for $6,900.

15. The prior owner of the home, Justin Shuck, wanted to regain ownership of the home.

16. On January 9, 2012, Respondent negotiated and signed a written agreement between Mr. Shuck and Respondent's client, Abpaymar.

17. The agreement required Mr. Shuck to make payments totaling $12,500 over eight (8) months in order to obtain a quit claim deed to the property.

18. The agreement stated that "[i]n the event that none of the checks bounce, and all of the checks clear Abpaymar's account, then Abpaymar shall execute and deliver to Shuck a Quit Claim Deed…"

19. The agreement did not mention association dues.

20. Mr. Shuck made all of the payments in accordance with the written agreement, and on or about August 9, 2012, Abpaymar received the final payment.

21. Thereafter, Respondent and his client Abpaymar failed to deliver a quit claim deed to Mr. Shuck.

22. On or about September 10, 2012, Respondent sent a letter to Mr. Shuck stating that Mr. Shuck was responsible for paying the past due association fees in the amount of $1,456.72.

23. On or about September 21, 2012, Mr. Shuck made a wire transfer in the amount of $1,456.72 in payment of the association dues.

24. In October 2012, Respondent filed a motion for writ of possession stating that as the rightful owner of the property, Abpaymar was entitled to possession, and having been foreclosed, Mr. Shuck had no right to possession.

25. Respondent also stated in his motion that "[d]espite the undersigned's efforts to have said Defendant vacate possession peacefully, he has refused."

26. Respondent did not disclose the written agreement in his motion.

27. In a cover letter to the judge dated October 1, 2012, Respondent stated that "[d]efendant, Justin Shuck, was foreclosed and did not object to the sale, yet he has refused to vacate possession despite multiple requests that he do so."

28. Respondent did not disclose the written agreement in his cover letter.

29. Thereafter, the court issued an order directing the clerk to issue a writ of possession, and on or about October 22, 2012, a sheriff's deputy posted a 24-hour eviction notice on the property.

30. On or about October 23, 2012, Mr. Shuck filed an emergency motion with the court disclosing the existence of the written agreement.

31. By order dated October 23, 2012, the court vacated the writ of possession and found that by failing to disclose the written agreement when seeking the writ of possession, Abpaymar had misrepresented its right to seek the writ.

32. By making misleading statements in his October 1, 2012, letter to the judge and in his motion for writ of possession, and by failing to inform the court of all material facts known to Respondent, Respondent violated Rule 4-3.3, Rules Regulating The Florida Bar.

33. After Respondent filed an amended motion for writ of possession and to vacate the court's *ex parte* order, Mr. Shuck hired an attorney, and the parties entered into a settlement agreement.

34. On March 25, 2013, the Twelfth Judicial Circuit Grievance Committee B found probable cause to file this complaint pursuant to Rule 3-7.4, of the Rules Regulating The Florida Bar, and this complaint has been approved by the presiding member of that committee.

35. By reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: **Rule 4-3.3** (Candor Toward the Tribunal).

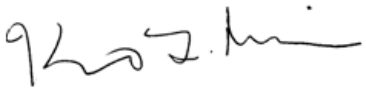
WHEREFORE, The Florida Bar prays respondent will be appropriately disciplined in accordance with the provisions of the Rules Regulating The Florida Bar as amended.

Leonard Evans Clark
Bar Counsel
The Florida Bar
Tampa Branch Office
4200 George J. Bean Parkway, Suite 2580
Tampa, Florida 33607-1496
(813) 875-9821
Florida Bar No. 657808
Primary email: lclark@flabar.org
Secondary email: tampaoffice@flabar.org
Secondary email: csullivan@flabar.org

KENNETH LAWRENCE MARVIN
Staff Counsel
The Florida Bar
651 East Jefferson Street
Tallahassee, Florida 32399-2300
(850) 561-5600
Florida Bar No. 200999
kmarvin@flabar.org

CERTIFICATE OF SERVICE

I certify that this document has been E-filed with The Honorable Thomas D. Hall, Clerk of the Supreme Court of Florida, using the E-Filing Portal and that a copy has been furnished by United States Mail via certified mail No. 7006 0100 0003 1079 0655, return receipt requested, to Respondent's Counsel, Scott K. Tozian, at Smith, Tozian & Hinkle, P. A., 109 North Brush Street, Suite 200, Tampa, FL 33602-4163, and via electronic mail to stozian@smithtozian.com; with a copy by electronic mail to Leonard Evans Clark, Bar Counsel, at lclark@flabar.org, on this 4th day of October, 2013.



KENNETH LAWRENCE MARVIN
Staff Counsel

NOTICE OF TRIAL COUNSEL AND DESIGNATION OF PRIMARY AND SECONDARY EMAIL ADDRESSES

PLEASE TAKE NOTICE that the trial counsel in this matter is Leonard Evans Clark, Bar Counsel, whose address, telephone number and primary email address are The Florida Bar, Tampa Branch Office, 4200 George J. Bean Parkway, Suite 2580, Tampa, Florida 33607-1496, (813) 875-9821 and lclark@flabar.org. His secondary email addresses are csullivan@flabar.org and tampaoffice@flabar.org.

Respondent need not address pleadings, correspondence, etc. in this matter to anyone other than trial counsel and to Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, kmarvin@flabar.org.

MANDATORY ANSWER NOTICE

RULE 3-7.6(h)(2), RULES OF DISCIPLINE, EFFECTIVE MAY 20, 2004, PROVIDES THAT A RESPONDENT SHALL ANSWER A COMPLAINT.

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR POLK COUNTY, FLORIDA

HSBC BANK USA, N.A., AS TRUSTEE FOR
THE HOLDERS OF DEUTSCHE ALT-A
SECURITIES MORTGAGE LOAN TRUST,
SERIES 2007-OA4 MORTGAGE PASS
THROUGH CERTIFICATES,

Plaintiff,

Case No. 2009-CA-012246

v.

BARRY SCHNEIDER and
JUNE A. SCHNEIDER, et al.,

Defendants.
_____/

MOTION FOR RECONSIDERATION OF CONTINUANCE OR DENIAL OF LEAVE TO AMEND

Defendants, BARRY SCHNEIDER and JUNE A. SCHNEIDER, by and through their undersigned counsel, move this Court for entry of an Order reconsidering its Order granting a continuance of trial or, alternatively, reconsidering its ruling denying Defendants leave to amend, and would show:

1. On March 19, 2012, this Court conducted a hearing on Defendants' Motion for Dismissal, Contempt, and Sanctions. Even though it was clear Plaintiff violated this Court's Order of January 23, 2011 directing Plaintiff to advance the case forward within 90 days, this Court denied that motion without explanation, then set the case for trial on April 17, 2012.

2. Realizing the case was going to trial and that Defendants had, apparently, filed a *pro se* Answer, the undersigned asked for leave to amend. Surprisingly, this Court refused, asserting the Court "would not tolerate" additional delay.

3. If this Court's position was to not allow delay, the undersigned could perhaps

MOTION HEARD, CONSIDERED
AND DENIED
THIS 18 Apr 12
JUDGE MICHAEL McCARTHY

Exhibit "A"

understand.

4. Incredibly, however, on the heels of refusing leave to amend for Defendants, (under the auspices of "not allowing delay"), this Court granted Plaintiff a continuance of trial, right as the trial was set to begin. Perhaps more disturbingly, this Court granted the continuance for no reason whatsoever. The arguments before the Court made it clear there was no "good cause" for a continuance, merely that Plaintiff had no witness with which to prove its case. Worse yet, it was clear that Plaintiff had a witness who was available, but that Plaintiff's counsel was unable to convince that witness that this trial was important enough to attend (and testify).

5. With all due respect, it is ***thoroughly offensive*** that this Court refused Defendants leave to amend a *pro se* Answer under the auspices of "no delay," yet this Court granted Plaintiff a delay of trial for no cause whatsoever. Apparently, delay is perfectly acceptable – so long as it comes from the Plaintiff (even if it is measured in years, as seen by the delay in prosecuting this case and Plaintiff's refusal to comply with the January 23, 2011 Order).

6. That may sound harsh, but think about it. **If a continuance is allowed, what is the harm in allowing Defendants to amend their pleading? Alternatively, if delay is not allowed for Defendants, why should it be allowed for Plaintiff?**

7. The double standard here, respectfully, reeks. If this Court's position is to not allow delay, that is understandable. However, not allowing delay from Defendant (what would have been a brief delay, if any, to amend a *pro se* pleading), while allowing years of delay from Plaintiff without repercussion (even in the face of Orders from this Court) ... that is offensive.

8. Ironically, as this Court granted a continuance of trial, it lamented what to do with all these foreclosure cases, or words to that effect, discussing the volume of foreclosure cases which plaintiffs cannot prosecute. Apparently, this Court does not realize that this problem will

never go away so long as this Court continues to rule and act as it has in this case. To wit, why should the Plaintiff do anything to prosecute this case? Plaintiff ignored this Court's January 23, 2011 Order for over a year, yet there was no sanction or repercussion. This Court set a trial and said it "would not tolerate" delay, yet when Plaintiff delayed by requesting a continuance, this Court allowed it. With all due respect, when this Court sets up an environment where it permits plaintiffs to delay, and permits plaintiffs to adjudicate foreclosure cases at whatever pace they see fit, then it should not be surprised when cases languish.

9. More importantly, this dynamic is terribly unfair to Defendants and, frankly, causes them to question the impartiality of this Court. What, exactly, does this Court perceive its role to be in this instance – a neutral and detached arbiter, adjudicating cases on their merits? Or a procuring cause of foreclosure judgments, i.e. someone who does whatever it can to ensure final judgments are entered for plaintiffs (as quickly as possible)?

10. All Defendants wanted was leave to amend – a chance to defend on the merits. If this Court did not want to allow that because a trial was imminent and delay "was not tolerated," that is perhaps understandable. However, it is incomprehensible how this Court can deny leave to amend a *pro se* answer under the auspices of "no delay," yet grant Plaintiff a continuance of trial for no reason whatsoever.

11. Hopefully, when presented with its rulings in this manner, this Court will realize and appreciate the double-standard it has shown to this point. This Court should reconsider its rulings and either grant leave to amend or deny Plaintiff's request for a continuance.

12. Perhaps more importantly, this Court should reconsider its approach to foreclosure cases as a whole. Cases will always languish so long as this Court continually shows there will never be any repercussion or sanction for plaintiffs violating Orders of this Court and

refusing to prosecute its cases.

WHEREFORE Defendants respectfully request relief in accordance with the foregoing.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail to Law Offices of Marshall C. Watson, P.A., 1800 N.W. 49th Street, Suite 120, Fort Lauderdale, Florida 33309 on this 18th day of April, 2012.

Mark P. Stopa, Esquire
FBN: 550507
Philip J. Healy, Esquire
FBN: 0071953
STOPA LAW FIRM
2202 N. Westshore Blvd.
Suite 200
Tampa, FL 33607
Telephone: (727) 851-9551
ATTORNEY FOR DEFENDANTS