IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

ADRES JAQUEEN JACKSON-WHYTE,

Respondent.

_____/

Supreme Court Case Nos.
SC22-1612 and SC22-1565

The Florida Bar File Nos.
2022-70,150(11F)MES
2023-70,219(11F)OSC

REPORT OF REFEREE

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 18, 2022, The Florida Bar filed its Petition for Contempt and Order to Show Cause against respondent in *Supreme Court Case No. SC22-1565; The Florida Bar File No. 2023-70,219(11F)OSC.* Subsequently, on November 29, 2022, The Florida Bar filed its Petition for Emergency Suspension against respondent in *Supreme Court Case No. SC22-1612; The Florida Bar File No. 2022-70,150(11F)MES*. By Order dated December 14, 2022, respondent was suspended by the Supreme Court of Florida on an emergency basis. Ultimately the undersigned

Referee was appointed to preside over both cases. On February 27, 2023, The Florida Bar filed its Motion to Consolidate. The two matters were consolidated pursuant to this Referee's Order dated March 1, 2023.

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The following documents were introduced into evidence by The Florida Bar:

1. The Petition for Emergency Suspension with attachments.
2. The Petition for Contempt and Order to Show Cause with attachments.
3. Receipt and Disbursement Journal as of November 30, 2021.
4. Composite Exhibit consisting of two emails and a voicemail printout.

The following documents were introduced into evidence by respondent:

A. Respondent's Answer to Petition for Emergency Suspension with attachments.
B. Respondent's Response to Petition for Contempt and Rule to Show Cause with attachments.

All items properly filed including pleadings, recorded testimony (if transcribed), exhibits in evidence, and the report of referee constitute the record in these cases and are forwarded to the Supreme Court of Florida.

II. FINDINGS OF FACT

Jurisdictional Statement: Respondent is and was, at all times mentioned herein, a member of The Florida Bar, albeit suspended to Order of the Florida Supreme Court dated December 14, 2022, and subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida.

Narrative Summary:

The bar's investigation of respondent commenced in October 2021 as a result of a judicial referral involving matters unrelated to the instant findings, but which caused records to be subpoenaed from both respondent's bank and respondent.

The records produced by Bank of America and the testimony of the bar's auditor, Patrick Dougherty, establish that respondent opened trust account no. xxxx6267 at Bank of America on August 17, 2018. A few days later, on August 21, 2018, respondent deposited a $100,000.00 settlement check from Progressive Insurance Company made payable to Jackson Holmes P.A. Trust Account and Leroy Moore. For the period of August 21, 2018 through October 23, 2019, no other funds were deposited into the

trust account. During that same time period, respondent made sixteen disbursements from the trust account which will be addressed in the following paragraphs.

On August 31, 2018, respondent disbursed two checks to herself totaling $35,000.00. The memo lines on both checks state “Attorneys fees”. As Mr. Moore’s funds were the only funds in the trust account, it appears that these were fees pertaining to respondent’s representation of Mr. Moore.

On September 9, 2018, respondent disbursed two checks for $3,300.00 each to Neefa Allison-Burgess and Dave Burgess, Jr. The memo lines on these two checks state “Personal Injury Claim Payment”. However, both the bar auditor’s testimony and the bank records reflect that no deposits were made to the trust account for the benefit of Ms. or Mr. Burgess.

On November 13, 2018, respondent disbursed $5,000.00 to Mount Nebo Missionary Baptist Church. Respondent made a second disbursement to Mount Nebo Missionary Baptist Church on December 14, 2018 for $34,305.33. However, both the bar auditor’s testimony and the bank trust account records reflect that no funds were deposited in

respondent's trust account for the benefit of Mount Nebo Missionary Baptist Church until October 24, 2019, approximately eleven months later.

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Between August 21, 2018 (when funds for the benefit of Leroy Moore were deposited) and October 23, 2019, no other funds were deposited into respondent's trust account. The balance in the trust account on that date was $593.67, reflecting the almost complete depletion of Leroy Moore's money. Accordingly, it is my finding that respondent used Leroy Moore's

money to fund the foregoing seven disbursements to these six other unrelated clients.

On October 24, 2019, respondent deposited a check in the amount of $42,805.33, for the benefit of Mount Nebo Missionary Church, into her trust account. This deposit came almost a year after respondent had disbursed funds to the church. Respondent testified that she issued the two earlier checks described above in anticipation of her receipt and deposit of these proceeds. She stated that she did receive a check for the benefit of the church in approximately December 2018, but that the bank would not accept the check because it was not issued to respondent on behalf of the church. She further explained that despite her best efforts, it was not until October 2019 that a replacement check was issued. She attributed this delay to a lack of cooperation from the opposing party in that action.

Besides the disbursements described above, respondent also made the following disbursements between August 21, 2018 and October 23, 2019: In March and April, 2019, respondent issued two checks to Leroy Moore totaling $3,300.00. Two other checks for $5,900.00 and $1,800.00 were issued to persons or entities for purposes which the auditor could not determine. Lastly, two checks were issued to respondent on August 9 and 22, 2019, in the amounts of $1,500.00 and $1,000.00 respectively. These

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With respect to respondent's cash payments to Mr. Moore, her testimony indicated that she did not have a ledger card or trust record of any kind reflecting any payments to Mr. Moore. She did not have a signed receipt for any payment. She did not have a signed closing statement

reflecting that Mr. Moore was even aware that his case was resolved or what he was due. There was simply no evidence offered by the respondent to corroborate her testimony. On the other hand, the bar offered substantial competent evidence reflecting respondent's misuse of Leroy Moore's money.

Moreover, the evidence presented by the bar demonstrated that no disbursements were made to Mr. Moore from the trust account even after respondent recouped the funds earmarked for the church on October 24, 2019, through the end of the auditor's review period on November 30, 2021. While there were two disbursements during this period made payable to respondent with memo lines indicating the disbursement pertained to Mr. Moore and therefore arguably could have been reimbursements to respondent, they totaled only $6,200.00 at most.

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With respect to the subpoenaed items, respondent testified that her inexperience as a sole practitioner caused her to be unaware of trust accounting record and procedure requirements set out in Chapter 5 of the Rules Regulating The Florida Bar. Consequently, she did not maintain the required records. She further testified that her eviction from her apartment in June/July 2022 caused her to take all closed files to the county dump as she had nowhere to store them. She claimed to have been unaware that the records and/or files were required by rule to be maintained for a period of six years following conclusion of the client matter. I find this explanation

does not excuse respondent's conduct particularly since she was on notice of the bar's ongoing investigation at the time she knowingly destroyed the subpoenaed client files. Finally, I reject respondent's assertion that she did not receive the bar's May 2022 subpoena until July 2022. The testimony of the bar's staff investigator, Thomas Reilly, and the supporting evidence (The Florida Bar Exhibit 4) indicate that respondent did receive the subpoena in May.

Based on the credible testimony and the substantial evidence presented, it is my conclusion that respondent misappropriated at least $50,406.33 of the $100,000.00 deposit made on August 21, 2018 for the benefit of Leroy Moore. Furthermore, I find that respondent failed to comply with two duly issued Florida Bar subpoenas.

Attorneys are hired when a person has a life-altering incident or situation, and clients place their trust in the person they have hired. The nature of that trust is precious. That trust is why it takes hard work and time to become an attorney. Few relationships are comparable to the power an attorney has in a client-lawyer relationship. For those reasons, becoming an attorney requires you to abide by all the rules that regulate all of us as professionals. Deliberate ignorance and tears are not things that can mitigate misconduct committed over a sustained period of time. For

these reasons, respondent's willful ignorance over the period of time from August 2018 through November 2021 cannot be excused or justified despite the testimony of the hardships she endured during that period. As the Supreme Court stated in the *Shanzer* case cited below, attorneys, like everyone, suffer hardships.

Respondent had a responsibility to bring herself up to speed on her professional and ethical obligations – even if she was not very experienced when she assumed the responsibility of being a sole practitioner. Time passed and respondent did nothing to remedy the defects in her practice and accounting until February 2022, when she took a trust accounting seminar. Her personal challenges simply do not justify or excuse her failure to do things right. At some point she had to know that she was making disbursements to people for whom she had not deposited funds. In fact, her own testimony as to the two significant disbursements to the church reflects that she was aware of this. Certainly, if those funds were not deposited, respondent had to realize she was giving Leroy Moore's money to someone else. Respondent's own testimony and concessions demonstrated her willful ignorance over a sustained period of time. While this may not be a situation where respondent stole client money for her own personal enjoyment, she did sustain her practice by her misuse of the

funds and consequently violated the rules addressed below. In this regard, I note the receipt and disbursement journal prepared by the bar's auditor (The Florida Bar Exhibit 3) which reflects over a dozen disbursements to respondent for payroll.

III. RECOMMENDATIONS AS TO GUILT

With respect to the emergency suspension matter [The Florida Bar File No. 2022-70,150(11F)(MES); Supreme Court Case No. SC22-1612], I find respondent guilty of violating the following Rules Regulating The Florida Bar:

- Rule 4-8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation);
- Rule 5-1.1 (b) (application of trust funds to the specific purpose for which entrusted); and,
- Rule 5-1.2 (trust accounting records and procedures).

With respect to the contempt matter [The Florida Bar File No. 2023-70,219(11F(OSC); Supreme Court Case No. SC22-1565], I find the respondent in contempt of court for failing to comply with two duly issued subpoenas for records which she was both required to maintain but did not, and which she also destroyed despite being on notice of the bar's ongoing investigation.

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

4.1(a) Disbarment is appropriate when a lawyer intentionally or knowingly converts client property regardless of injury or potential injury.

5.1(a) Disbarment is appropriate when a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

V. CASE LAW

I considered the following case law prior to recommending discipline:

The Florida Bar v. Tillman, 682 So.2d 542 (Fla.1996)

The Florida Bar v. Weinstein, 635 So.2d 21 (Fla. 1994)

The Florida Bar v. Barley, 831 So.2d 163 (Fla. 2002)

The Florida Bar v. Travis, 765 So.2d 689 (Fla. 2000)

The Florida Bar v. Shanzer, 572 So.2d 1382 (Fla. 1991)

The Florida Bar v. Brownstein, 953 So.2d 502 (Fla. 2007)

While the foregoing cases involve theft of client funds by lawyers for their own personal use as opposed to using one client's funds to pay a different client, I find this a distinction without difference. The plain

language of R. Regulating Fla. Bar 5-1.1 requires lawyers to apply trust funds to the specific purpose for which entrusted and the clear and convincing evidence in the instant case demonstrates that respondent did not do this, nor did she provide any meaningful significant independent evidence of payments to Leroy Moore for the full amount due him.

The *Brownstein* case is particularly noteworthy as it sets forth the Supreme Court holding that failure to maintain required trust records does not excuse the complete disregard of a valid subpoena. As such, the failure to maintain and produce required trust account records was determined to constitute the aggravating factor of intentionally failing to comply with rules or orders of the disciplinary agency.

I also take note of R. Regulating Fla. Bar 3-5.1(f) which states that disbarment is the presumed appropriate sanction for misappropriation of client trust funds. While this presumption is subject to rebuttal, the threshold is high, and I find that respondent did not meet that threshold. I find her conduct to be deliberate and knowing and therefore intentional pursuant to the *Barley* case.

Neither do I find the mitigators present in *The Florida Bar v. Mason*, 826 So.2d 985 (Fla. 2002) or *The Florida Bar v. Tauler*, 775 So.2d 944 (Fla. 2000) to be present in the instant case. Both *Mason* and *Tauler*

received suspensions as opposed to disbarment for misappropriating client funds, but both had very significant mitigation, including restitution and/or negligent conduct, as opposed to the intentional conduct I find here. I also take note of the Supreme Court's recent holdings reflecting their movement towards harsher sanctions for unethical and unprofessional conduct than might have been imposed in years past. See *The Florida Bar v. Marcellus* 249 So.3d 538 (Fla. 2018); *The Florida Bar v. Peterson*, 248 So.3d 1069 (Fla. 2018); *The Florida Bar v. Dopazo*, 232 So.3d 258 (Fla. 2017); and *The Florida Bar v. Rosenberg*, 169 S0.3d 1155 (Fla. 2015).

Finally, despite respondent's protestation that there was no public harm in the instant case, I find differently. Great public harm is committed when an attorney's practice diminishes the trust the public has in an attorney. To think that an attorney may use a client's funds in a reckless, negligent, knowing manner, as the respondent did here, is great public harm.

VI. AGGRAVATING AND MITIGATING FACTORS

I find the following factors in aggravation as identified in the Florida Standards for Imposing Lawyer Sanctions:

- dishonest or selfish motive;
- pattern of misconduct;

- multiple offenses;
- bad faith obstruction of the disciplinary process by intentionally failing to comply with rules or orders of the disciplinary agency;
- vulnerability of victim; and,
- substantial experience in the practice of law.

I find the following factors in mitigation as identified in the Florida Standards for Imposing Lawyer Sanctions:

- absence of a prior disciplinary record.

VII. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

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

A. Disbarment nunc pro tunc to the date of respondent's emergency suspension, to-wit: December 14, 2022.

B. Payment of The Florida Bar's costs in these proceedings.

Respondent will eliminate all indicia of respondent's status as an attorney on email, social media, telephone listings, stationery, checks, business cards, office signs, or any other indicia of respondent's status as an attorney, whatsoever.

VIII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

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

Personal History of Respondent:

Age: 38

Date admitted to the Bar: December 6, 2009

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

The Florida Bar, having been successful in this matter, shall be awarded their necessary taxable costs and shall submit their statement of costs, as well as a motion to assess costs, against respondent.

Dated this 23rd day of March, 2023.

/S/ MICHELLE A. BARAKAT

Michelle Alvarez Barakat, Referee

Original To:

Clerk of the Supreme Court of Florida; Supreme Court Building, 500 South Duval Street, Tallahassee, Florida, 32399.

Conformed Copies to:

Arlene Kalish Sankel, Chief Branch Discipline Counsel, The Florida Bar, Miami Branch Office, 444 Brickell Avenue, Suite M-100, Miami, Florida 33131, asankel@floridabar.org, kperaza@floridabar.org;

Adres Jaqueen Jackson-Whyte, Respondent, 633 Northeast 167th Street, Suite 1214, Miami, Florida 33162, awhyte_esq@att.net;

Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399, psavitz@floridabar.org.

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5.1(a) Disbarment is appropriate when a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

V. CASE LAW

I considered the following case law prior to recommending discipline:

The Florida Bar v. Tillman, 682 So.2d 542 (Fla.1996)

The Florida Bar v. Weinstein, 635 So.2d 21 (Fla. 1994)

The Florida Bar v. Barley, 831 So.2d 163 (Fla. 2002)

The Florida Bar v. Travis, 765 So.2d 689 (Fla. 2000)

The Florida Bar v. Shanzer, 572 So.2d 1382 (Fla. 1991)

The Florida Bar v. Brownstein, 953 So.2d 502 (Fla. 2007)

While the foregoing cases involve theft of client funds by lawyers for their own personal use as opposed to using one client's funds to pay a different client, I find this a distinction without difference. The plain

language of R. Regulating Fla. Bar 5-1.1 requires lawyers to apply trust funds to the specific purpose for which entrusted and the clear and convincing evidence in the instant case demonstrates that respondent did not do this, nor did she provide any meaningful significant independent evidence of payments to Leroy Moore for the full amount due him.

The *Brownstein* case is particularly noteworthy as it sets forth the Supreme Court holding that failure to maintain required trust records does not excuse the complete disregard of a valid subpoena. As such, the failure to maintain and produce required trust account records was determined to constitute the aggravating factor of intentionally failing to comply with rules or orders of the disciplinary agency.

I also take note of R. Regulating Fla. Bar 3-5.1(f) which states that disbarment is the presumed appropriate sanction for misappropriation of client trust funds. While this presumption is subject to rebuttal, the threshold is high, and I find that respondent did not meet that threshold. I find her conduct to be deliberate and knowing and therefore intentional pursuant to the *Barley* case.

Neither do I find the mitigators present in *The Florida Bar v. Mason*, 826 So.2d 985 (Fla. 2002) or *The Florida Bar v. Tauler*, 775 So.2d 944 (Fla. 2000) to be present in the instant case. Both *Mason* and *Tauler*

received suspensions as opposed to disbarment for misappropriating client funds, but both had very significant mitigation, including restitution and/or negligent conduct, as opposed to the intentional conduct I find here. I also take note of the Supreme Court's recent holdings reflecting their movement towards harsher sanctions for unethical and unprofessional conduct than might have been imposed in years past. See *The Florida Bar v. Marcellus* 249 So.3d 538 (Fla. 2018); *The Florida Bar v. Peterson*, 248 So.3d 1069 (Fla. 2018); *The Florida Bar v. Dopazo*, 232 So.3d 258 (Fla. 2017); and *The Florida Bar v. Rosenberg*, 169 S0.3d 1155 (Fla. 2015).

Finally, despite respondent's protestation that there was no public harm in the instant case, I find differently. Great public harm is committed when an attorney's practice diminishes the trust the public has in an attorney. To think that an attorney may use a client's funds in a reckless, negligent, knowing manner, as the respondent did here, is great public harm.

VI. AGGRAVATING AND MITIGATING FACTORS

I find the following factors in aggravation as identified in the Florida Standards for Imposing Lawyer Sanctions:

- dishonest or selfish motive;
- pattern of misconduct;

- multiple offenses;
- bad faith obstruction of the disciplinary process by intentionally failing to comply with rules or orders of the disciplinary agency;
- vulnerability of victim; and,
- substantial experience in the practice of law.

I find the following factors in mitigation as identified in the Florida Standards for Imposing Lawyer Sanctions:

- absence of a prior disciplinary record.

VII. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

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

A. Disbarment nunc pro tunc to the date of respondent's emergency suspension, to-wit: December 14, 2022.

B. Payment of The Florida Bar's costs in these proceedings.

Respondent will eliminate all indicia of respondent's status as an attorney on email, social media, telephone listings, stationery, checks, business cards, office signs, or any other indicia of respondent's status as an attorney, whatsoever.

VIII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

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

Personal History of Respondent:

Age: 38

Date admitted to the Bar: December 6, 2009

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

The Florida Bar, having been successful in this matter, shall be awarded their necessary taxable costs and shall submit their statement of costs, as well as a motion to assess costs, against respondent.

Dated this 23rd day of March, 2023.

/S/ MICHELLE A. BARAKAT

Michelle Alvarez Barakat, Referee

Original To:

Clerk of the Supreme Court of Florida; Supreme Court Building, 500 South Duval Street, Tallahassee, Florida, 32399.

Conformed Copies to:

Arlene Kalish Sankel, Chief Branch Discipline Counsel, The Florida Bar, Miami Branch Office, 444 Brickell Avenue, Suite M-100, Miami, Florida 33131, asankel@floridabar.org, kperaza@floridabar.org;

Adres Jaqueen Jackson-Whyte, Respondent, 633 Northeast 167th Street, Suite 1214, Miami, Florida 33162, awhyte_esq@att.net;

Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399, psavitz@floridabar.org.