

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,)
Complainant-Appellee,)
)
)
v.)
)
JOHN T. CARLON, JR.,)
Respondent-Appellant.)
_____)

Case No.: SC 00-1344
TFB No.: 1999-51,909 (17G)

REPLY BRIEF OF RESPONDENT-APPELLANT

JOHN T. CARLON, JR.
Respondent-Appellant
2737 East Oakland Park Blvd.
Suite 202
Post Office Drawer 9237
Fort Lauderdale, FL 33310-9237
Tel. (954) 563-2250
Florida Bar No. 011846

TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES	3
ARGUMENT	4
I. LIABILITY ISSUE	5
II. SANCTIONS ISSUE	6
CERTIFICATE OF SERVICE	8
CERTIFICATION OF TYPE, STYLE , SIZE AND ANTI-VIRUS SCAN	9

Authority

Page (s)

The Florida Bar v. Richardson, 574 So. 2d 60 (Fla. 1990)
cert. den., 502 U.S. 811, 112, S.Ct. 57, 116 L.Ed., 2d 33

6

ARGUMENT

I. LIABILITY ISSUE

Stripped of rhetoric, the relevant facts of this matter are that clients (Whalleys) employed Respondent pursuant to a detailed written Agreement; Respondent performed all his obligations under that agreement, submitting periodic accountings of his time, expended pursuant to that agreement; and rendered billings pursuant to those accountings which clients paid.

Several months after Respondent's file was closed, clients complained for the first time of being overcharged, but neither they, nor The Florida Bar, offer a scintilla of evidence to the effect that Respondent did not perform of the activities he charged for.

Neither the clients, nor The Florida Bar, offered any evidence that the hourly rate specified in Respondent's contract was clearly excessive and thus an ethical violation.

Further, the expert, by his own admission, dealt exclusively in probate matters and in evaluating Respondent's charges, ignores the fact that a real estate sale was also part of Respondent's responsibility.

Instead, The Florida Bar relies solely on the testimony of its expert- a Florida Bar member certified in the practice of wills, trusts, and estates.

Apart from the question of the standard to which Respondent (a general practitioner not certified in any field) was held by this expert, is the problem of the expert's claimed psychic powers to reach a judgment without bothering to look at Respondent's files.

Clearly, the purpose of this expert's testimony was not to render an objective unbiased opinion, but rather, to advocate the position of The Florida Bar regardless of the evidence - or lack thereof. If that testimony is rejected, as it should be - then there is no other evidence on which the Referee's recommendations can be based.

Further, The Florida Bar would have this court ignore the undisputed fact that Respondent was responsible for representing the Whalley's at the closing on the sale of the real estate and the problems presented by the "wild" mortgage deed as well as negotiating the escrow agreement under which the closing proceeds were held pending the closing of the estate.

Respondent has consistently denied wrongdoing and respectfully submits that all the credible evidence in the matter confirms his position.

II. SANCTIONS ISSUE

The Florida Bar relies on the Richardson¹ case as justification for the recommended sanctions of a 91 day suspension, but that case is clearly distinguishable from the instant case in several major particulars, to wit:

1. Richardson charged a total fee in excess of 45% of the value of the estate; Respondent's total fee for both the probate and real estate matters was less than 11%.
2. Respondent charged only for his expended time; his only minimum charge being 0.1 hour or 6 minutes; Richardson charged unrealistically (and improperly) high minimums.
3. Respondent did not, unlike Richardson, impose any "cover charges" or surcharges for pro bono activities.

¹ The Florida Bar v. Richardson, 574 So. 2d 60 (Fla. 1990), cert. den. 502 U.S. 811, 112 S. Ct. 57, 116 L. Ed 2d 33 (1991).

CONCLUSION

No credible evidence of any improper overcharge was afforded by The Florida Bar other than that occasioned by the typographical error in Respondent's periodic accountings.

The evidence in any event falls far short of the clear and convincing standard required, and this proceeding should be dismissed forthwith.

Respectfully submitted,

JOHN T. CARLON, JR.
Respondent-Appellant
2737 East Oakland Park Blvd.
Suite 202
Post Office Drawer 9237
Fort Lauderdale, FL 33310-9237
Tel. (954) 563-2250
Florida Bar No. 011846

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,)
 Complainant-Appellee,)
)
v.)
)
JOHN T. CARLON, JR.,)
 Respondent.-Appellant.)
_____)

Case No.: SC 00-1344
TFB No.: 1999-51,909 (17G)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY I have furnished a copy of Respondent-Appellant's

Reply Brief by U.S. Mail to each of the following:

Ronna Freidman Young, Esquire
Assistant Staff Counsel
The Florida Bar
5900 N. Andrews Avenue, Suite 835
Fort Lauderdale, FL 33309

Billy Jack Hendrix, Esquire
Director of Lawyer Regulation
The Florida Bar
650 Apalachee Parkway
Tallahassee, FL 32399-2300,

this _____ day of July, 2001.

JOHN T. CARLON, JR.
Respondent-Appellant
2737 E. Oakland Park Blvd., #202
Post Office Drawer 9237
Fort Lauderdale, FL 33310-9237
Tel. (954) 563-2250
Fla. Bar No. 011846

CERTIFICATION OF TYPE, SIZE, STYLE AND ANTI-VIRUS SCAN

Undersigned counsel hereby certifies that the Reply Brief of John T. Carlon, Jr., is submitted in 14 point, proportionately spaced, Times New Roman font, and that the computer disk filed with this brief has been scanned and found to be free of viruses by McAfee Anti Virus for Windows.