

**IN THE SUPREME COURT OF FLORIDA
(Before a Referee)**

THE FLORIDA BAR,

Complainant,

v.

SCOTT ALAN SALOMON,

Respondent.

**Supreme Court Case
No. SC07-1683**

**The Florida Bar File
No. 2007-50,414(17A)**

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

The Florida Bar filed its formal Complaint in this cause on September 10, 2007. Thereafter, the undersigned was appointed to preside as referee, by order of the Chief Judge of the Eleventh Judicial Circuit. When respondent failed to file a timely answer to The Florida Bar's complaint, as mandated by R. Regulating Fla. Bar 3-7.6(h)(2), the Bar filed its Motion for Default Final Judgment. Respondent filed neither an answer nor a response of any kind. Accordingly, this referee granted The Florida Bar's motion, and entered an Order on Default Final Judgment. On October 29, 2007, The Florida Bar filed a Motion to Set Final Hearing on Sanctions. In this motion, The Florida Bar proposed a series of dates, beginning in November 2007 and ending in February 2008, on which the hearing

could be scheduled. This referee directed that the final hearing on sanctions be scheduled for January 22, 2008. Accordingly, The Florida Bar prepared and served a hearing notice on November 1, 2007. Pursuant to timely notice, this matter was called up for final hearing on sanctions on January 22, 2008. Bar counsel appeared, and filed a memorandum of law on discipline. Despite having received notice of the final hearing, respondent failed to appear, failed to file any pleading, and failed to respond to the hearing notice in any way. On April 3, 2008, this referee granted respondent's motion to set aside the Order of Default and granted respondent 10 days to file an Answer. Respondent failed to file an Answer and the Order on The Florida Bar's Second Motion for Default Final Judgment was entered on April 18, 2008. The matter was scheduled for Final Hearing on Sanctions on June 23, 2008. Respondent filed and/or presented several Motions which have been addressed in separate Orders. However, none preclude the submission of this Report. The pleadings and all other papers filed in this cause, which are forwarded to the Supreme Court of Florida with this report, constitute the entire record.

During the course of these proceedings, respondent appeared pro se and at times failed to appear; The Florida Bar was represented by Lorraine Christine Hoffmann.

II. **FINDINGS OF FACT:**

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

B. Narrative Summary:

1. On May 13, 2006, Donato Walter Casale received a traffic ticket in St. Lucie County, Florida.

2. Shortly thereafter, Casale hired respondent to represent him in the matter.

3. In June 2006, Casale paid and respondent accepted a \$350.00 fee for the representation.

4. After he accepted this fee, respondent failed to take any action in Casale's case or on Casale's behalf.

5. Due to respondent's inaction, Casale's driver's license was suspended, in July 2006.

6. When Casale learned that his driver's license had been suspended, he made many attempts (personally and/or through his office staff) to contact respondent in order to find out the status of his ticket case, and to cause his driver's license to be reinstated.

7. Despite continued assurances to Casale and/or his staff that Casale's driver's license suspension would be lifted immediately, respondent failed to take any action to cause Casale's driver's license to be reinstated.

8. Thereafter, respondent and his office staff refused to accept or answer any calls or communications from Casale and/or Casale's office staff.

9. From that point forward, respondent failed to keep Casale informed of the status of his ticket and license suspension cases, and failed to comply with Casale's requests for information regarding both matters.

10. Because of respondent's refusal to communicate with Casale, Casale was unable to make informed decisions regarding his cases.

11. After Casale filed a complaint against respondent with The Florida Bar, respondent agreed to refund any and all legal fees Casale paid to him.

12. Despite his agreement to do so, respondent failed to refund any monies to Casale.

13. By failing to take any action on Casale's ticket case, respondent caused Casale's driver's license to be suspended.

14. By failing to take any action on Casale's ticket case, causing Casale's driver's license to be suspended, respondent failed to provide Casale with competent legal representation.

15. By failing to take any action on Casale's case, causing Casale's driver's license to be suspended, respondent failed to diligently represent Casale, in both matters.

16. By accepting a \$350.00 fee and performing no services for Casale, respondent charged, collected and retained a clearly excessive fee.

17. By failing to timely resolve Casale's ticket case, respondent failed to expedite litigation and caused Casale's driver's license to be suspended.

18. By telling Casale that he would cause Casale's driver's license to be reinstated, and then failing to do so, respondent made a material misrepresentation to his client.

19. By telling Casale that he would refund the legal fees that Casale paid to him, and then refusing to do so, respondent made a material misrepresentation to his client.

20. By refusing to take or respond to telephone calls (and requests for case status and information) from Casale and/or his representatives, respondent failed to communicate with his client.

21. Respondent's inaction in this matter delayed Casale's case significantly, and caused additional harm to him. This conduct is prejudicial to the administration of justice.

22. Due to respondent's inaction, Casale was forced to hire another attorney in order to have his driver's license reinstated.

23. By the foregoing conduct, respondent intentionally violated The Rules Regulating the Florida Bar.

24. Because of the foregoing conduct, Casale suffered harm as a result of respondent's representation of him.

25. By the foregoing conduct, respondent intentionally acted in a manner that is contrary to honesty and justice.

III. RECOMMENDATION AS TO GUILT:

By the conduct set forth above, respondent violated R. Regulating Fla. Bar **3-4.2** [Violation of the Rules of Professional Conduct as adopted by the rules governing The Florida Bar is a cause for discipline.]; **3-4.3** [The commission by a lawyer of an act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the state of Florida and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline.]; **4-1.1** [A lawyer

shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.]; **4-1.3** [A lawyer shall act with reasonable diligence and promptness in representing a client.]; **4-1.4(a)** [A lawyer shall. . . (3) keep the client reasonably informed about the status of the matter; and (4) promptly comply with reasonable requests for information.]; **4-1.4(b)** [A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.]; **4-1.5(a)** [An attorney shall not enter into an agreement for, charge, or collect an illegal prohibited or clearly excessive fee...]; **4-3.2** [A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.]; **4-8.4(a)** [A lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.]; and **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...].

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

I recommend that respondent be found guilty of misconduct justifying bar discipline, and that he be suspended for a period of one year and thereafter, until he proves rehabilitation. I also recommend that respondent be required to pay The

Florida Bar's reasonable costs in this matter, and that statutory interest should accrue until such costs are paid in full. Should this cost judgment remain unsatisfied 30 days after the judgment becomes final, respondent should be deemed delinquent and declared 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). In addition, I recommend that respondent be required to pay restitution in the amount of \$350 to Casale.

In arriving at the foregoing disciplinary recommendation, I have given consideration to the following aggravating factors, as set forth in *The Florida Standards for Imposing Lawyer Sanctions*:

A. Standard 9.22(a) Prior Discipline - Respondent received a public reprimand on July 13, 2000 in Supreme Court Case No.: SC00-271. Respondent received a public reprimand on April 17, 2008 in Supreme Court Case No.: SC07-50.

B. Standard 9.22(b) Dishonest or Selfish Motive - Respondent retained fees he did not earn, even after he agreed to return such fees to the injured client.

C. Standard 9.22(i) Substantial Experience in the Practice of Law – Respondent has practiced law for more than 15 years, having been admitted on September 23, 1992.

I have also reviewed *The Florida Standards for Imposing Lawyer Sanctions* and the relevant case law, to ensure that my recommended discipline has a reasonable basis in both.

The Florida Standards for Imposing Lawyer Sanctions

Standards 4.42 (Lack of Diligence) and **4.62** (Lack of Candor) apply to the instant case. **Standard 4.42** states that suspension is appropriate when a lawyer knowingly fails to perform services for a client, or engages in pattern of neglect with respect to client matters, and causes serious or potentially serious injury to a client. This is applicable because respondent's failure to act on Casale's behalf was the direct cause of the suspension of Casale's driver's license. **Standard 4.62** states that suspension is appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client. This Standard applies to this case because respondent deceived Casale when he agreed to represent him in the ticket matter (and failed to do so), when he promised to cause the immediate reinstatement of Casale's driver's license (and failed to do so), and when he agreed to refund Casale's unearned legal fees (and failed to do so). These intentional misrepresentations deceived Casale, and injured him.

The Case Law

The default entered in this case is supported by both The Florida Bar v. Porter, 684 So. 2d 810 (Fla. 1996) and The Florida Bar v. Nunes, 734 So.2d 393

(Fla. 1999). My review of the case law on sanctions reveals that suspension is appropriate for lawyers who severely neglect a case entrusted to them, and who lie to their clients. *See* The Florida Bar v. Cimble, 840 So.2d 955 (Fla. 2002) [One year suspension for neglect of client matters]; The Florida Bar v. Centurion, 801 So. 2d 858 (Fla. 2000) [One year suspension appropriate where respondent neglected cases, failed to communicate and made misrepresentation in order to hide his misconduct]; The Florida Bar v. Elster, 770 So.2d 1184 (Fla. 2000) [Three year suspension for neglect of client matters]; The Florida Bar v. Jordan, 705 So. 2d 1387 (Fla. 1998) [One year suspension for neglect of client matters]; The Florida Bar v. Morrison, 669 So.2d 1040 (Fla. 1996) [One year suspension for neglect of client matters]; The Florida Bar v. Brakefield, 679 So.2d 766 (Fla. 1996) [6 month suspension for neglect of client matters]; The Florida Bar v. Winderman, 614 So.2d 484 (Fla. 1993) [One year suspension appropriate for incompetence, failure to keep clients informed, failure to protect clients' interests, and misrepresentation]; The Florida Bar v. Bazley, 597 So.2d 796 (Fla. 1992) [8 month suspension for incompetence, neglect, lack of communication, improper withdrawal and misrepresentation]; and The Florida Bar v. Wilder, 543 So.2d 222 (Fla. 1989) [6 month suspension and restitution for neglect and misrepresentation]. Additionally, respondent's willful failure to participate during crucial portions of these disciplinary proceedings calls into serious question his fitness to practice law.

The Florida Bar v. Bartlett, 509 So.2d 287, 289 (Fla. 1987). Finally, I have considered and relied upon The Florida Bar v. Bailey, 803 So.2d 683, 694-695 (Fla. 2001), regarding the purpose of lawyer discipline. Based on my review of all of the foregoing, I recommend that respondent be suspended from the practice of law for a period of one (1) year. I recommend that respondent pay restitution in the sum of \$350 to Casale. I also recommend that respondent be compelled to pay The Florida Bar's reasonable costs in this case.

V. PERSONAL HISTORY, PAST DISCIPLINARY RECORD AND LISTING OF AGGRAVATING AND MITIGATING FACTORS:

Prior to recommending discipline, and pursuant to R. Regulating Fla. Bar 3-7.6(k)(1), I considered the following:

A. Personal History of Respondent:

Age: 40

Date admitted to The Florida Bar: September 23, 1992.

B. Applicable Aggravating and Mitigating Factors
Florida Standards for Imposing Lawyer Sanctions

(1) Aggravating Factors:

Standard 9.22 (a) - prior disciplinary offenses;

Standard 9.22(b) - dishonest or selfish motive;

Standard 9.22(i) - substantial experience in the practice of law.

(2) Mitigating Factors: None

C. Prior Discipline: Respondent received a public reprimand for by order of the Supreme Court of Florida dated July 13, 2000. Respondent received a public reprimand by order of the Supreme Court of Florida dated April 17, 2008.

VI. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED:

I find that The Florida Bar has incurred reasonable costs in the matter and that same should be assessed against the respondent, as follows:

| | |
|-------------------------------------|--------------------------|
| A. Grievance Committee Level Costs: | |
| 1. Court Reporter Costs | \$ - 0 - |
| 2. Bar Counsel Travel Costs | \$ - 0 - |
| B. Referee Level Costs: | |
| 1. Court Reporter Costs | \$1,277.50 |
| 2. Bar Counsel Travel Costs | \$125.36 |
| C. Administrative Costs | \$1,250.00 |
| D. Auditor Costs | \$ - 0 - |
| E. Miscellaneous Costs: | |
| 1. Investigator Costs | \$ - 0 - |
| 2. Witness Fees | \$ - 0 - |
| 3. Copy Costs | \$ 2.10 |
| 4. Telephone Charges | \$ - 0 - |
| 5. Translation Services Fees | \$ - 0 - |
| TOTAL COSTS | <u>\$2,654.96</u> |

I recommend that respondent be required to pay The Florida Bar's reasonable costs in this matter, as outlined herein, and that statutory interest should accrue until such costs are paid in full. Should this cost judgment remain

unsatisfied 30 days after the judgment becomes final, respondent should be deemed delinquent and declared 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 ___3rd___ day of _____July_____, 2008.

HONORABLE NURIA SAENZ
REFEREE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Report of Referee has been mailed to THE HONORABLE THOMAS D. HALL, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, FL 32399-1927, and that copies were mailed by regular U.S. mail to the following: STAFF COUNSEL, The Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399-2300; and LORRAINE CHRISTINE HOFFMANN, Bar Counsel, The Florida Bar, 5900 North Andrews Avenue, Suite 900, Fort Lauderdale, FL 33309-2366; and to SCOTT ALAN SALOMON, Respondent, Florida Litigation Center, 11555 Heron Bay Blvd., Suite 200, Coral Springs, FL 33076-3362, on this ___3rd___ day of _____July_____, 2008.

NURIA SAENZ, REFEREE