

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Case No. SC10-413

v.

TFB File No. 2009-00,689(1A)

SHARON DELENE REGAN,

Respondent.

REPORT OF THE REFEREE ACCEPTING CONSENT JUDGMENT

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as Referee to conduct disciplinary proceedings herein according to R. Regulating Fla. Bar 3-7.6, the following proceedings occurred:

The Florida Bar filed its Complaint and Request for Admissions in the abovecaptioned case on March 5, 2010. Respondent filed an Answer to the Complaint and Response to the Request for Admissions on April 1, 2010. A Telephonic Case Management conference was held on June 9, 2010, at which a final hearing was scheduled for August 23, 2010. The Florida Bar propounded Interrogatories and a Request for Production of documents on June 11, 2010, to which Respondent filed Answers on July 12, 2010. The parties entered into a

Consent Judgment in the abovecaptioned case on August 18, 2010. All of the aforementioned pleadings, responses thereto, and this Report constitute the record in this case and are forwarded to the Supreme Court of Florida.

II. FINDINGS OF FACT

A. Jurisdictional Statement. Respondent is, and at all times material to this complaint was, a member of The Florida Bar, subject to the jurisdiction of the Supreme Court of Florida and the Rules Regulating the Florida Bar.

B. Narrative Summary Of Cases – Based on Respondent’s conditional guilty plea, I would find the following facts:

1. Respondent was retained by Oran H. Baughn d/b/a Baughn Renovations to represent him in approximately 6 “no pay” cases in which Mr. Baughn was trying to collect monies owed to him for services rendered to homeowners after Hurricane Ivan in September 2004. In one of the cases, the homeowners, Michael and Candace Lang stopped paying Mr. Baughn in January 2006.

2. Respondent spent from February through April 2006 doing the transactional work to prepare to file a complaint against the Langs for breach of contract. She issued requests to the homeowners for sworn statements and served a demand for prompt payment under state law. She visited the construction site several times and arranged for Mr. Baughn and the subcontractors to review the list of complaints at the job site, take photos, notify their carriers, prepare a site report

and provide final payment releases. Respondent assisted Mr. Baughn in filing a claim with his insurance carrier. She also notified Wells Fargo mortgage company of the lien and advised them that the balance of the insurance proceeds should be kept until the lien dispute was resolved. She reviewed contract and permit documents, and then drafted the lien.

3. After the draft of the construction lien was prepared, Respondent contacted Mr. Baughn on numerous occasions requesting him to come to her office to review the lien and to pay for the filing costs. Mr. Baughn failed to respond. In order to protect the client's rights and to meet the 90-day statutory deadline, Respondent properly filed the lien on April 17, 2006, in Santa Rosa County, and paid the filing fee out of her own pocket.

4. The Langs, through their attorney, filed a Notice of Contest of Lien, which was certified by the clerk as being forwarded to Baughn Renovations on May 12, 2006.

5. Section 713.22, Fla. Stat. (1999) requires a lienor to file suit within 60 days after service of a Notice of Contest of Lien and service is deemed complete upon mailing of the Notice. Respondent was required to file suit within 60 days of the date of service of the notice, or no later than July 11, 2006.

6. Respondent has admitted that she inadvertently calculated the 60 days from May 15, 2006, the date of the receipt of service of the Notice of Contest of

Lien, rather than the mailing date of May 12, 2006, as certified by the Clerk of Court. Respondent did not file the complaint until July 14, 2006, 63 days after the Notice of Contest of Lien was served. Since the complaint was three days beyond the jurisdictional time limit and the statute is strictly construed, the lien was automatically extinguished and unenforceable.

7. Respondent's complaint included four counts in which foreclosure of a mechanics' lien was only one count. Respondent also included three other separate counts for damages for breach of written and oral contract, and damages for quantum meruit, as well as a resultant trust to be placed on the Wells Fargo proceeds. Despite numerous attempts to have Mr. Baughn come to the office to sign the verified complaint and pay filing fees from May through July 2006, he failed to do so. Respondent filed the complaint on July 14, 2006, without Mr. Baughn's verification and paid the filing fee out of her own pocket, but did not serve it on the opposing parties. On August 11, 2006, she filed an Amended Verified Complaint that Mr. Baughn did sign, and a Notice of Lis Pendens, after which she served the parties.

8. In September 2006, Mr. Baughn retained co-counsel to represent him in the litigation of his complaint. When that co-counsel withdrew in October 2007, Mr. Baughn hired a third attorney in March 2008 when Respondent officially withdrew from the case. The untimeliness of the one lien count in the complaint was never raised until almost two years after Respondent had filed the complaint. At that

point in time, there was nothing else she could do to help the client because she was no longer his attorney.

9. The Langs filed a Motion for Final Summary Judgment on February 19, 2008. Mr. Baughn claims that he was prejudiced because he could not proceed on the lien count and collect his own attorney's fees, and he was required to pay opposing counsel's fees and costs. Mr. Baughn, however, had numerous options but failed to pursue them. Rather, Mr. Baughn, upon advice of his new counsel, stipulated to the summary judgment motion on all four counts, including the lien count, in June 2008. Upon Motion for Attorney's Fees and Costs by the Langs' attorney, Mr. Baughn also agreed to pay the opposing counsel's attorney's fees in a stipulated settlement agreement without objecting to the amount of the fees.

III. RECOMMENDATIONS AS TO GUILT

I recommend that Respondent be found guilty of violating the following Rules Regulating the Florida Bar: to wit: 4-1.1(Competence) and 4-1.3(Diligence).

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

Based on the foregoing findings, I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that she be disciplined as follows:

A. The imposition of an admonishment before the referee pursuant to

Rule 3-5.1(d).

B. Respondent shall pay The Florida Bar's taxable costs in the amount of \$1805.18 in these proceedings.

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD AND AGGRAVATING AND MITIGATING FACTORS

Prior to recommending discipline pursuant to Rule 3-7.6(m)(1), I considered the following personal history of Respondent, to wit:

- A. Personal History of Respondent
Age: 46
Date admitted to the Bar: October 24, 1991
- B. Prior Discipline: None
- C. Under Standard 9.22, I considered the following aggravating factor:
 - (i) substantial experience in the practice of law.
- D. Under Standard 9.32, I considered the following mitigating factors:
 - (a) no prior disciplinary record
 - (b) absence of a dishonest or selfish motive
 - (d) timely good faith effort to rectify consequences of misconduct
 - (e) full and free disclosure to disciplinary board and cooperative attitude toward proceedings
 - (g) good character and reputation in the legal community
 - (l) remorse

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

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

Administrative Costs, pursuant to R.	
Regulating Fla. Bar 3-7.6(q)(i)(I)	\$1,250.00
Bar Counsel Travel Expenses	314.88
Investigative Fees	<u>240.30</u>
TOTAL	<u>\$1,805.18</u>

It is recommended that such costs be charged to Respondent and that interest at the statutory rate shall accrue and that should such cost judgment not be satisfied within thirty days of said judgment becoming final, Respondent shall be deemed delinquent and 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 _____ day of _____, 2010.

JUDGE BRANTLEY S. CLARK, JR.
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, Supreme Court Building, Tallahassee, Florida 32399-1927, and that copies were furnished by regular U.S. Mail to KENNETH LAWRENCE MARVIN, Staff Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300; OLIVIA PAIVA KLEIN, Bar Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300; and SHARON DELENE REGAN, Respondent, whose record Bar address is 125 S. Alcaniz Street, Suite 1, Pensacola, Florida, 32501-6004 on this _____ day of _____, 2010.

JUDGE BRANTLEY S. CLARK, JR.

REFEREE