

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

THE FLORIDA BAR,

CASE NO. SC11-1234

Complainant,

TFB NO. 2010-10,448(13B)

v.

DOMINYKA MINDAUGAS NETCHOUNAS

Respondent.

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REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned being duly appointed as Referee to conduct disciplinary proceedings herein according to the Rules Regulating The Florida Bar, this Referee has considered the Conditional Guilty Plea for Consent Judgment. Any pleadings, notices, motions, orders, transcripts, and exhibits are forwarded to The Supreme Court of Florida with this report and constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: Chardean Mavis Hill

For The Respondent: Pro Se

II. Findings of Fact: After considering all the pleadings and evidence before me, I find those facts as set forth in the Conditional Guilty Plea for Consent Judgment to which Respondent admits guilt, are adopted as my findings of fact as stated below:

Respondent was retained to represent Ms. Roseli Cauduro in an immigration matter to adjust Ms. Cauduro's status to permanent resident based on her marriage to a U.S. Citizen. Respondent charged \$2,800.00 plus costs for the representation. Ms. Cauduro's paperwork was submitted to USCIS and an initial interview was

scheduled for February 17, 2009. During the interview, the immigration officer expressed concern about a previous marriage and scheduled a second interview. During the second interview, the immigration officer re-questioned Ms. Cauduro about her first marriage and concluded that the proper documents for divorce had not been obtained, causing her paperwork to be incomplete and marriage to her American husband fraudulent. Ms. Cauduro's application for adjustment of status was denied; she was arrested for bigamy, and placed in removal proceedings. She was given an ankle monitor, released, and given time to resolve the matter. It is Respondent's position that the denial of the application concluded her representation of Ms. Cauduro. However, Respondent was later paid \$1,500.00 by Ms. Cauduro to conduct additional research regarding the Brazilian marriage. About two weeks after Respondent received the additional \$1,500.00, Ms. Cauduro, on her own, was able to fix the paperwork and finalize her divorce in Brazil. Ms. Cauduro maintains that she provided Respondent with this information and documentation; however, Respondent ceased communicating with her. After months of waiting and not getting any response, Ms. Cauduro requested the return of her file documents and a refund of the \$1,500.00. Respondent never responded to Ms. Cauduro's requests. Ms. Cauduro subsequently retained two attorneys to attempt to resolve her immigration status. Respondent represented that she left all her files in her office when she closed her practice in June 2009. Anything left in Respondent's office was apparently discarded by the landlord. Respondent did not take any steps to protect client files upon closing her practice. By way of mitigation, Respondent has represented that she suffers from a sleep disorder, which results in short-term memory loss, and that she closed her practice because of this disorder. Respondent has also represented that she has not practiced law since mid to late 2009.

III. Recommendations as to Guilt: As to each count of the Complaint, and based on the Conditional Guilty Plea for Consent Judgment, I make the following recommendations as to guilt or innocence. Pursuant to the Conditional Guilty Plea for Consent Judgment, I find the respondent guilty of violating the Rules Regulating The Florida Bar as admitted in the Conditional Guilty Plea for Consent Judgment and as stated below:

- A. **Rule 4-1.16(d)** (Declining or Terminating Representation: Protection of Client's Interest); and

- B. **Rule 4-8.1(b)** (Bar Admission and Disciplinary Matters – A lawyer shall not knowingly fail to respond to a lawful demand for information from an admission or disciplinary authority).

IV. Standards for Imposing Lawyer Sanctions:

7.0 Violation of Other Duties Owed as a Professional

- 7.2 Suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

This standard is applicable because Respondent failed to respond the inquiries from the Bar and failed to respond to two Orders to Show Cause.

8.0 Prior Discipline Orders

- 8.1 Disbarment is appropriate when a lawyer: (1) intentionally violates the terms of a prior disciplinary order and such violation causes injury to a client, the public, the legal system, or the profession.

This standard is applicable because Respondent failed to comply with the terms of the Court's June 23, 2010 Order. Respondent also failed to maintain a valid official Bar address, which resulted in two suspensions pursuant to Orders to Show Cause.

V. Caselaw:

Florida Bar v. Grosso, 647 So. 2d 840 (Fla. 1994) (10-day suspension): The Florida Supreme Court held that an attorney's failure to respond to an investigative inquiry by The Florida Bar warranted a 10-day suspension. Failure to respond was the only violation.

Florida Bar v. Brakefield, 679 So. 2d 766 (Fla. 1996) (six-month suspension): Brakefield neglected client matters in four separate cases. He failed to diligently and competently represent his clients, he abandoned them without first withdrawing from representation, and he failed to protect his clients' interests upon termination. The Referee found him guilty of violating Rules 4-1.1 (lack of competence); 4-1.3 (lack of diligence); 4-1.4 (lack of communication); and 4-1.16(d) (protection of client's interests upon termination of representation). Brakefield had a prior

disciplinary record consisting of an admonishment and a public reprimand. No mitigating factors were found. The Court approved the recommended sanction of a six-month suspension.

VI. Aggravating and Mitigating Factors:

9.2 Aggravation

9.22 Aggravating factors include:

- (a) prior disciplinary offenses
- (c) pattern of misconduct
- (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency (*This is based on failure to respond to the Inquiry/Complaint)
- (h) vulnerability of victim

9.3 Mitigation

9.32 Mitigating factors include:

- (c) personal or emotional problems
- (f) inexperience in the practice of law

VII. Recommendation as to Disciplinary Measures to Be Applied:

Pursuant to the Conditional Guilty Plea for Consent Judgment, I make the following recommendations as to the disciplinary measures to be applied:

- C. Respondent shall be placed on a 91-day suspension, *nunc pro tunc* to June 23, 2011, the date of Respondent's suspension on the Order to Show Cause in SC11-681, upon the acceptance of this Conditional Guilty Plea for Consent Judgment by the Supreme Court of Florida; and
- D. Respondent shall pay the Bar's costs in this matter.

VIII. Personal History and Past Disciplinary Record: Prior to recommending discipline pursuant to Rule 3-7.6(k)(l), I considered the following:

A. Personal History of Respondent:

Age: 35

Date Admitted to Bar: December 17, 2002

B. Aggravating Factors:

9.22(a) prior disciplinary offenses;

9.22(c) pattern of misconduct;

9.22(e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency; and

9.22(h) vulnerability of victim

Prior Discipline:

In SC10-811 (TFB No. 2010-11,277(13B)(OSC), Respondent received an indefinite suspension for failing to respond to an official Bar inquiry as required by Rule 4-8.4(g), Rules Regulating The Florida Bar, effective July 23, 2010. Respondent was ordered to comply with Rule 3-5.1(g), Rules Regulating The Florida Bar, which required Respondent to notify her clients, opposing counsel, and the courts of her suspension and provide TFB with a sworn affidavit listing the names of all persons furnished with the suspension order within 30 days of the Court's June 23, 2010 Order.

In SC11-681 (TFB No. 2011-90,163(OSC), Respondent received a 91-day suspension, effective June 23, 2011, for failing to comply with the terms of the Court's June 23, 2010 Order in SC10-811. Respondent was also assessed costs in the amount of \$1,250.00. Respondent has not paid the costs and has not yet complied with the terms of the Court's June 23, 2010 Order.

On August 29, 2011, Respondent provided a detailed response to the Inquiry/ Complaint. In SC10-811, Bar Counsel filed a Certification that Respondent has filed a written response to the Inquiry/ Complaint with the Court on August 31, 2011.

C. Mitigating Factors:

9.32(c) personal or emotional problems; and

9.32(f) inexperience in the practice of law

IX. Statement of Costs and Manner in Which Costs Should Be Taxed: I find the costs set forth in The Florida Bar's Motion to Assess Costs filed in this cause were reasonably incurred and were not unnecessary, excessive or improperly authenticated and Respondent stipulated to the payment of such costs incurred by The Florida Bar.

It is recommended that the costs itemized in The Florida Bar's Motion to Assess Costs in the total sum of **\$1948.49** be charged to Respondent and that interest at the statutory rate shall accrue and be deemed delinquent 30 days after the judgment in this case becomes final unless paid in full or otherwise deferred by the Board of Governors of The Florida Bar

Dated this 10th day of October, 2011.



Honorable Lynn Tepper
Referee

Original to:

The Honorable Thomas D. Hall, Clerk, the Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1925

Copies to:

Chardean Mavis Hill, Assistant Bar Counsel, The Florida Bar, 4200 George J. Bean Parkway, Suite 2580, Tampa, Florida 33607

Dominyka Mindaougas Netchiounas, Respondent, at official Bar address of P.O. Box 21794, Tampa, FL 33622-1794; and to her stated address of 2130 Sonoma Drive, Nokomis, Florida 34275; and via email to dance1325@yahoo.com

Kenneth Lawrence Marvin, Staff Counsel, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300