

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Supreme Court Case
No. SC12-461

v.

KIMBERLY S. DAISE,

Respondent.

The Florida Bar File No.
2012-00,652(11A-MFC)

_____/

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

Pursuant to the undersigned being duly appointed as Referee for the Supreme Court of Florida to conduct disciplinary proceedings as provided for by Rule 3-7.6(a) of the Rules Regulating The Florida Bar, review of a consent judgment for discipline was undertaken. All of the pleadings, notices, motions, orders, and exhibits are forwarded with this report and the foregoing constitute the record in this case.

The following attorneys appeared as counsel for the parties:

On Behalf of The Florida Bar: Daniela Rosette, Bar Counsel
The Florida Bar
444 Brickell Avenue
Suite M-100
Miami, Florida 33131

On Behalf of the Respondent: George D. Cholakis, Esquire
2250 S.W. 3rd Avenue
Suite 202
Miami, Florida 33129

Respondent has submitted a Disbarment on Consent, which provides for a five (5) year disbarment, to become effective upon the entry of the Supreme Court's final order in this cause. The position of The Florida Bar, as approved by a Designated Reviewer of the Eleventh Judicial Circuit, is that Respondent's plea be accepted.

II. FINDINGS OF FACT:

A. Jurisdictional Statement:

Respondent is and was at all times material herein a member of The Florida Bar, albeit suspended pursuant to a Supreme Court Order dated March 9, 2012, and subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

B. Narrative Summary of Case:

In this Consent Judgment, Respondent admits certain factual matters, which I hereby accept and adopt as the findings of fact in this cause, to-wit:

1. On or about October 11, 2011, an Information was filed against Respondent in the Southern District Court of Florida, in the cause styled United States of America v. Kimberly S. Daise, Case No. 11-80175-CR RYSKAMP/HOPKINS. Respondent was charged with one (1) count of conspiracy

to commit bank fraud and wire fraud. Respondent had also been charged on September 26, 2011 with one (1) count of grand theft in Miami-Dade County Court.

2. Thereafter, on or about January 11, 2012, Respondent entered into a plea agreement in the federal case, Case No. 11-80175-CR-RYSKAMP/HOPKINS, whereby she pled guilty to the one (1) count in the Information charging her with conspiracy to commit bank fraud and wire fraud. As a condition of her plea agreement, Respondent agreed to resign and surrender her license to practice law in the State of Florida and in any other jurisdiction in which she is permitted to practice law, and not to seek the reinstatement of her license before the completion of her sentence, including any term of supervised release.

3. In addition to these conditions of her guilty plea, Respondent agreed to pay restitution in the amount of \$811,500 to EverBank (or its successor corporation), and in the amount of \$1,040,00 to First Franklin, a division of National City Bank (or its successor corporation), for a total of \$1,851,500, which is the same as the loss amount upon which sentencing will be calculated. Respondent further agreed to pay a special assessment in the amount of \$100.

4. Respondent is currently cooperating with the federal government in

these matters. She similarly cooperated with the State authorities prior to her arrest, and as recently as February 16, 2012.

III. RECOMMENDATION AS TO GUILT:

Based on the foregoing, I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar: Rules 4-8.4(a) (violate or attempt to violate the Rules of Professional Conduct), 4-8.4(b) (commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects), and 4-8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

Having reviewed the record of these proceedings, I find that Respondent's plea and the recommendation of The Florida Bar as to the term of discipline are both fair to Respondent and in the best interests of the public. Accordingly, Respondent's Disbarment on Consent and the terms of discipline recommended by The Florida Bar are accepted and hereby adopted as the recommendation of this Referee in this matter.

V. 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: 48

Date admitted to The Florida Bar: September 22, 1989

Prior Discipline: None

B. Factors Considered in Mitigation: I find that the following factors,

which were submitted by Respondent, apply in mitigation.

- 9.32(j) (interim rehabilitation): Respondent has been undergoing treatment with Alcoholics Anonymous and Narcotics Anonymous for the past year. In addition, for the past year Respondent has participated in a federal program operated under the theory of “Moral Reconciliation Therapy,” which consists of accepting responsibility for her misconduct, dealing with her addictions, and ultimately assimilating back into society
- 9.32(l) (remorse): Respondent has acknowledged and accepted responsibility for her misconduct

C. Factors Considered in Aggravation: None

VI. STATEMENT OF COSTS AND MANNER IN WHICH COSTS

SHOULD BE TAXED: I find that pursuant to Rule 3-7.6(q) of the Rules of Discipline, reasonable costs are to be awarded to The Florida Bar as the prevailing party in this disciplinary proceeding. The amount to be assessed against Respondent shall be determined by the undersigned following a further submission by The Florida Bar regarding its taxable costs.

Dated this _____ day of _____, 2012.

HONORABLE KENENTH A. GOTTLIEB,
Referee

Copies to: Daniela Rosette, Bar Counsel
George D. Cholakakis, Attorney for Respondent
Kenneth L. Marvin, Staff Counsel