

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Case No. SC12-517

v.

TFB File No. 2011-00,077 (2B)

KENNETH J MORILAK,

Respondent.

REPORT OF REFEREE ACCEPTING DISBARMENT ON CONSENT

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rule 3-7.6, Rules of Discipline, the following proceedings occurred:

On March 15, 2012, The Florida Bar filed its Notice of Determination of Guilt against Respondent in these proceedings. On March 3, 2012, respondent tendered his Disbarment on Consent. All of the aforementioned pleadings, responses thereto, exhibits received in evidence, 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 mentioned during this investigation was, a member of The Florida Bar, subject to the jurisdiction

and disciplinary rules of the Supreme Court of Florida. In addition to membership in The Florida Bar, respondent was an officer with the Judge Advocate General's Corp in the United States Army Reserves.

B. Narrative Summary Of Case.

On March 17, 2011, in the case of United States of America v. Kenneth Morilak, United States District Court, District of Maryland, Respondent pled guilty to one count of violating 18 U.S.C. § 287, False Claims Against the Government, a felony, and was sentenced to 5 years probation, including 8 months home confinement, 40 hours community service and restitution. Respondent's plea was based on the following facts:

In or around October 2003, Respondent was ordered to temporary duty at the Pentagon in Washington, D.C. While on temporary duty, Respondent was entitled to reimbursement for actual lodging expenses, however the Joint Federal Travel Regulation forbade reimbursement for lodging provided by friends or family members.

When Respondent submitted his first travel voucher to the Defense Finance and Accounting Service (DFAS), he also submitted a lease purporting to be between him and K2 Holdings for \$600 per week. K2 Holdings was a Florida corporation established by Respondent in his fiancé's name in or around September 2003 and had no interest in the property where Respondent was living.

From October 2003 until the end of his initial temporary duty assignment in

March 2004, Respondent submitted travel vouchers to the government claiming lodging expenses ranging from \$600 to \$750 per week, paid to K2 Holdings.

On October 18, 2004, Respondent began a second voluntary tour in Washington, D.C. Respondent began submitting monthly travel vouchers to DFAS based on a one-year lease with a fictitious company called "Lotus Flower Property Management".

Although Respondent and his now wife had, in fact, rented an apartment for \$1,085 per month, the lease along with invoices and copies of checks submitted to DFAS claimed that Respondent was paying Lotus Flower \$3,690 per month from October 2004 through March 15, 2005. The checks that were sent to DFAS were made out to Lotus Flower, but never cashed.

In March 2005, Respondent and his wife moved to another apartment, for which they paid approximately \$1,449 per month. In April 2005, Respondent submitted an addendum to the Lotus Flower lease to DFAS, claiming an increase in rent for the remainder of the 1 year lease to \$4,500 per month. On November 1, 2005, Respondent submitted an additional addendum to the Lotus Flower lease to DFAS, claiming he had once again moved, and listing his new rental amount as \$4,750 per month.

Respondent and his wife had moved in August 2005 and signed a lease on a rental property in Germantown, Maryland for \$1,650 per month. They continued to reside at the Germantown property and pay the same rental amount until the expiration of Respondent's duty orders in August 2007.

The total amount of lodging claims submitted to DFAS by Respondent between October 2003 and August 2007 totaled \$143,841.17. The actual loss to the U.S. government, if any, is currently under review by the Defense Office of Hearing and Appeals (DOHA Case 2011-CL-080201). Once DOHA issues a decision the U.S. District Court will make a final determination of actual loss.

III. RECOMMENDATIONS AS TO GUILT

I recommend the acceptance of the disbarment on consent, specifically noting that Respondent admits that the foregoing allegations, if proven, would constitute a violation of the following Rules Regulating The Florida Bar: Rule 4-8.4(b) (A lawyer shall not 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) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation).

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that he be disciplined by:

- A. Disbarment and
- B. Payment of The Florida Bar's costs.

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD

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

Age: 44

Date admitted to the Bar: June 22, 1998

Prior Discipline: None

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	
to Rule 3-7.6(q)(1)(I), Rules of Discipline	\$1,250.00
Investigative Costs	145.00
TOTAL	\$1,395.00

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 _____, 2012.

Josefina Maria Tamayo, Referee
Room 301B, Leon County Courthouse
301 S. Monroe St.
Tallahassee, FL 32301-1861

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Report of Referee has along with the complete file been mailed to THE HONORABLE THOMAS D. HALL, Clerk, Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32399-1927, and that copies of the Report of Referee were furnished by regular U.S. Mail to KENNETH LAWRENCE MARVIN, Staff Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300; ALLISON CARDEN SACKETT, Bar Counsel, Tallahassee Branch Office, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, and KENNETH J MORILAK, Respondent, whose record Bar address is 3825 Appaloosa Dr., Woodbridge, VA 22192-6220, on this _____ day of _____, 2012.

Josefina Maria Tamayo, Referee