

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

BRIAN SCOTT FREEMAN,

Supreme Court Case  
No. SC14-1267

The Florida Bar File  
No. 2011-10,902 (20A)

Respondent.

**REPORT OF REFEREE**

**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 July 1, 2014, The Florida Bar filed its Complaint against Respondent in these proceedings. The undersigned was duly appointed as Referee on July 9, 2014. A case management conference was held on August 19, 2014. A final hearing was held on November 4, 2014. Any pleadings, responses thereto, notices, motions, orders, transcripts, exhibits, and this Report constitute the record in this case and are forwarded to the Supreme Court of Florida.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: Chardean Mavis Hill, Esquire  
Troy Matthew Lovell, Esquire

For The Respondent: Scott K. Tozian, Esquire

## **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 of the Supreme Court of Florida.

B. Narrative Summary of Case. I made the following findings of fact:

Respondent's client, Mr. Sergio Hernandez, executed five (5) advance funding contracts with Fast Funds, Inc., ("Fast Funds") prior to the commencement of Respondent's representation. The advance funding contracts purported to be assignments of interest to Fast Funds of future settlement funds obtained by Mr. Hernandez from his personal injury case. When Mr. Hernandez's personal injury case settled, I find that Respondent was between a rock and a hard place as to how to handle the portion of the funds for which Fast Funds claimed an interest.

Based on the evidence presented in this case, I do not find that Respondent had a legal duty to protect Fast Funds' interest, as Complainant's lawsuit against Respondent resolved in Respondent's favor. Based upon the authority cited, for there to have been an ethical duty to invoke the provisions of Rule 5-1.1(e) and 5-1.1(f), Rules Regulating The Florida Bar, a legal duty must have existed. In this case, Respondent was not involved when the documents were drafted, when they were presented to Mr. Hernandez, or when Mr. Hernandez executed the documents. Additionally, Respondent neither provided Fast Funds with a letter of protection nor ratified Mr. Hernandez's agreements with Fast Funds. I find that Respondent could not have issued a letter of protection based upon a review of the Rules and various Ethics Opinions. He also did not benefit from the agreement. The facts of this case indicate that Respondent put Mr. Hernandez on notice and attempted to protect Fast Funds by including language in the closing documents acknowledging the debt and the client's intent to pay. Mr. Hernandez signed the closing statement, evidencing his intention to directly settle his debts with Fast Funds. Although I think the better practice would probably have been for Respondent to deposit the funds within a court registry and remove himself from the situation, it is possible that a complaint could be filed against the attorney for wrongfully withholding funds. Because I believe there is a need for clarification as to an attorney's responsibility in these situations involving advance funding companies, I cannot make a finding of a violation of Rules 5-1.1(e) or (f) by clear and convincing evidence.

**III. Recommendations as to Guilt:**

I find that the allegations against Respondent were not proven by clear and convincing evidence, thus Respondent is not guilty of violating Rule 5-1.1(e) or 5-1.1(f), Rules Regulating The Florida Bar.

**IV. Recommendation as to Disciplinary Measures:**

Based upon my findings that Respondent is not guilty of any violations of the Rules Regulating The Florida Bar, Respondent shall have no discipline imposed.

**V. Authority and Case law:**

In making my findings and recommendation, I reviewed the following authorities and case law:

- 1) Rule 5-1.1(e) and Rule 5-1.1(f) as well as the comments to these Rules.
- 2) Florida Bar Ethics Opinions 92-6, 00-3, and 02-4.
- 3) Fausone v. U.S. Claims, Inc., 915 So. 2d 626, 629 (Fla. 2d DCA 2005)(including in its opinion, a section titled, "A Possible Need for Regulation" and noting "if The Florida Bar is going to allow lawyers to promote and provide such agreements to their clients, it would seem that the legislature might wish to examine this industry to determine whether Florida's citizens are in need of any statutory protection.").

**VI. Statement of Costs and Manner in Which Costs Should be Taxed:**

Based upon the finding of not guilty, I hereby recommend that each party bear its own costs.

DATED this 5 day of Jan, 2015

om-1fa  
Honorable Don Thomas Hall, Referee

Electronically Filed with:

**Honorable John A. Tomasino**, Clerk of the Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927, [e-file@flcourts.org](mailto:e-file@flcourts.org)

Copies to:

**Brian Scott Freeman, Respondent, c/o Scott Kevork Tozian, Esquire, Counsel for Respondent**, at Smith, Tozian, Daniel & Davis, P.A., 109 North Brush Street, Suite 200, Tampa, Florida 33602

**Chardean Mavis Hill, Bar Counsel, and Troy Matthew Lovell, Bar Counsel**, The Florida Bar, 4200 George J. Bean Parkway, Suite 2580, Tampa, Florida 33607; and

**Adria E. Quintela, Staff Counsel**, The Florida Bar, 1300 Concord Terrace, Suite 130, Sunrise, Florida 33323-2899