IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA

THE FLORIDA BAR,
Complainant,

Case Nos.: SC09-1953
TFB NOL: 2007-11,274(13D)

v.

MICHAEL VINCENT LAURATO,
Respondent

_____/

I. Summary of Proceedings: The Florida Bar filed a complaint against Michael Vincent Laurato alleging that he engaged in conduct involving dishonesty, fraud, deceit, and misrepresentation and engaged in conduct prejudicial to the administration of justice in violation of Rule 4-8.4(c) and (d), Rules Regulating the Florida Bar. Pursuant to the undersigned being duly appointed as referee to conduct the disciplinary proceedings herein according to the Rules Regulating The Florida Bar, a final hearing was held on March 16, 2010. 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 attorney's appeared as counsel for the parties:

For The Florida Bar: Troy Matthew Lovell

For The Respondent: Scott K. Tozian

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 .

B. Narrative Summary: Evidence Considered Regarding Guilt

COUNT I:

Respondent was a defendant in the civil action styled Celebrity Carpets and Interiors, Inc., d/b/a Naffco v. Michael V. Laurato, Case Number 05-2728 F, in the Circuit Court of the Thirteenth Judicial Circuit, Hillsborough County, Florida. Gary Sprague, a process server, testified that he attempted to serve process on respondent's wife, Karina Laurato, at the home address, 3710 West Leona, Tampa, at approximately 9:50 p.m., on the evening of January 11 and approximately 6:35 a.m. on the morning of January 12, 2007. After the second failed attempt on the morning of the 12,th Sprague parked across the street facing the residence. While waiting in his car he observed a gentleman pull up in front of the home and approached the man with the papers in his hand. He asked the gentleman if Karina Laurato was at home and the gentleman told him that she was living in Miami. He then identified the man as respondent. Sprague advised his client that he was unable to serve the witness and the client then provided him with special instructions to serve the witness while she picked her daughter up at school. On January 16, 2007, Sprague went to the school, announced himself to security, and waited for the witness to arrive. He observed a black Range Rover pull up and identified it as the same vehicle with the same license plate as the one he observed when he attempted service on Leona Street January 11 and 12. He was told by school security that the driver was Karina Laurato and he served the witness at that time. Sprague admitted that he did not have an independent recollection of the events and he no longer had his field notes from that event. He relied solely on his wife's notes typed on the subpoena return.

Respondent's testimony was that he was not at home on the evening of January 11 or the morning of January 12. However, his wife, Karina Jauregui Laurato, her daughter Maria Ariztizabal, and his mother Elina Betencourt, were all at the home on the evening of January 11 and all testified that no one knocked on the door that night. Karina and Maria testified that they were both in the home on the morning of the 12th and no one knocked on the door that morning either.

Both respondent and his brother, Jorge Gonzalez, testified that Jorge picked respondent up at his office at approximately 7:30 p.m. on January 11th and they spent the night at Jorge's house. The next morning Jorge drove respondent to a 6:00 a.m. spin class and Jorge continued on to Calta's gym. After the spin class respondent ran to Calta's Gym to meet his brother , arriving at the gym at approximately 7:00 a.m. Jorge and respondent then continued with their workout, running through a Tampa neighborhood. Ardyn Cuchel, an associate of respondent, testified that she also ran with respondent on that morning. Both Jorge and respondent testified that after returning home and showering, they headed out for a road trip to Lake Worth somewhere between 9:00 or 10:00 am. The two never made it to Lake Worth because respondent's wife called and he had to return home. It was mid morning by the time his brother dropped him off at his office for him to pick up his car and drive home. Respondent testified that he had never seen Sprague before the day of trial.

COUNT II:

Respondent testified under oath at a deposition in Celebrity Carpets and Interiors, Inc., d/b/a Naffco v. Michael V. Laurato, Case Number 05-2728 F, in the Circuit Court of the Thirteenth Judicial Circuit, Hillsborough County, Florida. During respondent's deposition he testified that he had "[n]ever been sued once for breach of contract." At the time, however,

respondent had in fact been sued more than once for breach of contract. Respondent does not dispute that he denied ever having been sued in contract, however, he asserts that the Bar cannot prove that he intended to make a false statement when he testified, and further argues that his statement was not responsive to any question but was rather offered in a narrative fashion toward the end of a lengthy deposition.

At trial, respondent was asked "[p]rior to giving your deposition in this case, had you ever been sued for breach of contract?" and he replied "[w]ith the documents you have here, the answer to that question is no." He was then asked "[w]hat is the factual answer to that question"" and he replied "[w]ith the documents that I have before me, the answer is no." Finally, he was asked "[t]o the best of your recollection, had you ever been sued for breach of contract ... [p]rior to October of 2006" and he replied "[b]ased on the documents again that you have there, the answer to that question is no." The attorney for the Bar then clarified that he was not asking him to interpret the documents but asking him to give his best answer based on his recollection as he sat there that day, whether or not he had been sued for breach of contract prior to 2006. Respondent testified ". . . [i]f I had been sued for breach of contract, which I do not believe that I have outside of the documents which you have presented here . . . I don't believe that I have...and to my recollection, the answer to that question is no."

Respondent's attorney asked him if he recalled the deposition testimony where he said that he had never been sued in a breach of contract action. With regard to that question, respondent testified that during deposition he said that he had "never been sued for breach of contract" because he believed he was being asked only whether or not he had ever been sued for breach of contract regarding construction lien matters. At trial, respondent stated that opposing counsel in that case never confronted him with or referenced four lawsuits that were

subsequently the basis of the motion for sanctions in the instant case. Respondent testified that those cases were not referenced and "[t]hat was clearly not the context of this entire discussion." Respondent's counsel then named each of the four cases which are the subject of this claim and asked respondent what the basis was for each. For two of the cases, Acys and Arrow Imaging[1], respondent claimed they were both "open accounts." For All Languages by Mentani, Inc,[2] he claimed it was an account stated. For the final case, Laurato v. ZOM Residential Services, Inc.,[3] he claimed that was action that he brought against the owner of his rental home for breach of contract in an attempt to "get out of the lease because they refused to fix the roof." He then acknowledged that there was a counterclaim filed against him in that action. However, he testified that he was not "thinking about any of these lawsuits" during the deposition because he "was intending to refer to construction disputes and other issues in the case ..." . The Bar entered exhibits 4 through 11 into evidence, all of which contained pleadings regarding the prior breach of contract cases which are the subject of this claim.

III. RECOMMENDATION AS TO GUILT

A: As to Count I: Having reviewed the file and having heard all of the evidence I recommend that Respondent be found not guilty of violating Rule 4-8.4(c) and (d), Rules Regulating the Florida Bar. I find that the Florida Bar did not meet their burden of proof of clear and convincing evidence that respondent misled the process server as to whether or not his wife was at home on the morning of January 12, 2007. *Florida Bar v. Rood*, 622 So. 2d 974, 977 (Fla. 1993). Specifically, there were various witnesses who testified that respondent was not at the residence on the morning of January 12, when the events leading up to this charge allegedly

[1] Acsys Inc., v. Laurato d/b/a Law Office of Michael Laurato, No: 2001-19714-SC; Bar's Exhibits 7-9. Arrow Imaging Solutions, Inc., v. Austin and Laurato, 2001-12784-SC, Bar's Exhibit 10.
[2] All Languages by Mentani, Inc., No: 2003-2533-SC, Bar's Exhibits 4-6.
[3] Laurato v. Zom Residential Services, Inc., No: 2003-SP3165, Bar's Exhibit 11.

took place. Moreover, there exists some deficiency in Gary Sprague's testimony. Namely, his entire testimony at both deposition as well as trial depended entirely upon notations transcribed on the subpoena return. These notations are not his notes but his wife's transcriptions of field notes which no longer exist.

B. As to Count II: Having reviewed the file and having heard all of the evidence, I recommend that Respondent be found guilty of violating Rule 4-8.4(c) and (d), Rules Regulating the Florida Bar. The Florida Bar did meet their burden of proof of clear and convincing evidence that respondent's testimony under oath at a deposition in a civil action was false, in violation of Florida Rules Regulating the Florida Bar, Rule 4-8 (c) and (d). *Florida Bar v. Rood*, 622 So. 2d 974, 977 (Fla. 1993). The evidence at trial established that Respondent's misconduct in this case was knowing and deliberate. *Fla. Bar v. Fredericks*, 731 So. 2d 1249, 1252 (Fla. 1999). Respondent's deposition has few direct answers; and most answers were contradictory even within the same answer. Some answers were sarcastic, flippant, argumentative and nonresponsive. Responses were often irrelevant, illogical and nonsensical and even included name calling. Specifically, with regard to the question posed at deposition as to whether or not respondent had ever been sued for breach of contract, I find Respondent's statement to be unresponsive and puffery. In the deposition Respondent cites to construction case examples and then does not respond to the question. Instead, Respondent provided a long narrative of unresponsive answers. Furthermore, Respondent testified at trial that he still does not believe that he has ever been sued for breach of contract (prior to his 2006 deposition). In light of all of the evidence, I find that the Bar has met its burden of clear and convincing evidence as to Count II. *In re Davey*, 645 So. 2d 398, 404 (Fla. 1994).

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

Prior to trial the parties agreed that if the undersigned were to recommend a finding of guilt as to any of the counts, a separate evidentiary hearing would be held for the sole purpose of addressing sanctions. Since I do recommend Respondent be found guilty as to Count II, an evidentiary hearing will be held pursuant to the parties' agreement. The Florida Bar has requested a sixty (60) day extension for the purposes of the hearing and A Recommendation as to Disciplinary Measures To Be Applied will be forthcoming pursuant to the Order Extending Time.

Dated this 30 day of April, 2010.

William R. Webb, Referee

Copies: Troy Matthew Lovell, Assistant Staff Counsel, The Florida Bar, 5521 W. Spruce Stree, Suite C-49, Tampa, Florida 33607-5958

Smith, Tozian & Hinkle, P.A., 109 North Brush Street, Suite 200, Tampa, Florida 33602