

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

ROSEMARIE FELLER,

Respondent.

SUPREME COURT CASE
No. SC22-1779

THE FLORIDA BAR FILE
No. 2019-30,056 (5B)

ANSWER, AFFIRMATIVE DEFENSES & MOTION TO DISMISS

The Respondent, ROSEMARIE FELLER, by and through his undersigned attorney, files this Answer and Affirmative Defenses pursuant to the applicable R. Regulating Fla. Bar and Florida Rules of Civil Procedure, and states:

1. The Respondent admits paragraph 1 of the Bar's complaint.
2. The Respondent admits paragraph 2 of the Bar's complaint.
3. The Respondent is without sufficient knowledge as to the allegations contained in paragraph 3 of the Bar's complaint and must therefore deny same. Further, the Respondent would deny that there was sufficient probable cause to file this complaint.

4. The Respondent admits paragraph 4 of the Bar's complaint.
5. The Respondent admits paragraph 5 of the Bar's complaint.
6. The Respondent admits paragraph 6 of the Bar's complaint.
7. The Respondent admits paragraph 7 of the Bar's complaint.
8. Paragraph 8 of the Bar's complaint is admitted as to the filing. It

is

specifically admitted that on or about May 22, 2015, Respondent received a telephone call late in the day from Moscow asking Respondent for a favor. Mosco requested that Respondent help him file articles of organization for Appa, LLC with Ann Torres listed as the managing member. Respondent assisted Moscow on this administrative task as a favor and a member of her staff assisted. All remaining allegations of paragraph 8 are denied.

9. The Respondent admits paragraph 9 of the Bar's complaint.
10. The Respondent admits paragraph 10 of the Bar's complaint.
11. The Respondent admits paragraph 11 of the Bar's complaint.
12. The Respondent admits paragraph 12 of the Bar's complaint.
13. The Respondent admits paragraph 13 of the Bar's complaint.
14. The Respondent admits paragraph 14 of the Bar's complaint.
15. The Respondent admits paragraph 15 of the Bar's complaint.

16. The Respondent admits paragraph 16 of the Bar's complaint.

17. Paragraph 17 of the Bar's complaint is admitted in part and denied in part. It is denied that Mosco initially gave respondent \$50,000.00 to capitalize the law firm. Moscow actually paid \$37,083.44 as a pre-payment of his company's share of the lease costs for Respondent to hold in her firm's bank account and pay Mosco's share of the monthly rent for his businesses. It is admitted that Moscow executed a lease on behalf of the law firm for the shared space at the location. It is denied that Moscow made an application for a bank account on behalf of the law firm. It is admitted that Moscow was a signatory on the account.

18. The Respondent admits paragraph 18 of the Bar's complaint.

19. Paragraph 19 of the Bar's complaint is admitted as to Moscow executing a lease on behalf of the law firm for the shared office space. All remaining allegations of paragraph 19 are denied.

20. Paragraph 20 of the Bar's complaint is admitted subject to the following clarification: Moscow actually paid \$37,083.44 as a pre-payment of his company's share of the lease costs for respondent to hold in her firm's bank account and pay Mosco's share of monthly rent for his company at the same location.

21. Paragraph 21 of the Bar's complaint is admitted.

22. The Respondent admits paragraph 22 of the Bar's complaint.

23. The Respondent admits paragraph 23 of the Bar's complaint subject to the following clarification: Respondent called The Florida Bar's Ethics Hotline to seek guidance on the use of the title "Director of Finance" and based on that consultation believed at all times relevant to this complaint that the title was appropriate.

24. The Respondent admits paragraph 24 of the Bar's complaint.

25. The Respondent admits paragraph 25 of the Bar's complaint.

26. The Respondent denies paragraph 26 of the Bar's complaint.

27. The Respondent admits paragraph 27 of the Bar's complaint.

28. The Respondent admits paragraph 28 of the Bar's complaint.

29. The Respondent denies paragraph 26 of the Bar's complaint.

30. The Respondent denies paragraph 26 of the Bar's complaint.

31. The Respondent admits paragraph 27 of the Bar's complaint.

32. The Respondent admits paragraph 32 of the Bar's complaint.

33. The Respondent admits paragraph 33 of the Bar's complaint.

34. The Respondent admits paragraph 34 of the Bar's complaint.

35. The Respondent admits paragraph 35 of the Bar's complaint.

36. The Respondent admits paragraph 36 of the Bar's complaint.

37. The Respondent admits paragraph 37 of the Bar's complaint.

AFFIRMATIVE DEFENSES

38. As a first affirmative defense, Respondent affirms that at all Times she acted with the good faith belief that her actions were ethical and proper in the matter referenced in the Bar's complaint.

39. As a second affirmative defense the Respondent asserts that the rule violation cited by The Florida Bar [R. Regulating Fla. Bar 4-5.4(c)] is contradicted by the fact that Respondent created Feller Law PLLC to correct her mistake immediately upon learning of the mistake and just a few weeks after the first entity was created.

40. As a third affirmative defense the Respondent asserts that the Rule violation cited by The Florida Bar [R. Regulating Fla. Bar 4-8.6(c)] is contradicted by the fact that there is no evidence in the Bar's complaint remotely showing a scintilla of evidence that Moscow performed "policy-making" functions at Respondent's law firm.

41. As a fourth affirmative defense the Respondent asserts that rule violation cited by The Florida Bar [R. Regulating Fla. Bar 4-3.3(a)(1)] is an

intent rule and therefore there must be clear and convincing evidence that the Respondent intentionally engaged in the conduct that allegedly violated such rule and that the Bar will be unable to meet this burden.

42. As a fifth affirmative defense the Respondent asserts that rule violation cited by The Florida Bar [R. Regulating Fla. Bar 4-3.4(g)] is an intent rule and therefore there must be clear and convincing evidence that the Respondent intentionally engaged in the conduct that allegedly violated such rule and that the Bar will be unable to meet this burden.

43. As a sixth affirmative defense the Respondent asserts that rule violation cited by The Florida Bar [R. Regulating Fla. Bar 4-3.3(b)] is an intent rule and therefore there must be clear and convincing evidence that the Respondent intentionally engaged in the conduct that allegedly violated such rule and that the Bar will be unable to meet this burden.

44. As a seventh affirmative defense the Respondent asserts that Rule violation cited by The Florida Bar [R. Regulating Fla. Bar 4-5.4(c)] is an intent rule and therefore there must be clear and convincing evidence that the Respondent intentionally engaged in the conduct that allegedly violated such rule and that the Bar will be unable to meet this burden.

45. As an eighth affirmative defense the Respondent asserts that rule

violation cited by The Florida Bar [R. Regulating Fla. Bar 4-5.4(e)] is an intent rule and therefore there must be clear and convincing evidence that the Respondent intentionally engaged in the conduct that allegedly violated such rule and that the Bar will be unable to meet this burden.

46. As a ninth affirmative defense the Respondent asserts that rule violation cited by The Florida Bar [R. Regulating Fla. Bar 4-8.4(a)] is an intent rule and therefore there must be clear and convincing evidence that the Respondent intentionally engaged in the conduct that allegedly violated such rule and that the Bar will be unable to meet this burden.

47. As tenth affirmative defense the Respondent asserts that rule violation cited by The Florida Bar [R. Regulating Fla. Bar 4-8.6(c)] is an intent rule and therefore there must be clear and convincing evidence that the Respondent intentionally engaged in the conduct that allegedly violated such rule and that the Bar will be unable to meet this burden.

48. As an eleventh affirmative defense the Respondent asserts that The Rule violation cited by The Florida Bar [R. Regulating Fla. Bar 4-8.6(d)] is contradicted by the fact that Respondent created Feller Law PLLC to correct her mistake immediately upon learning of the mistake and just a few weeks after the first entity was created. Respondent did not intentionally

engage in any conduct that allegedly violated such rule and that the Bar will be unable to meet this burden.

49. As a final affirmative defense the Respondent asserts that the allegations and factual conclusions referenced by the Bar in its complaint cannot be accepted as conclusive proof of the matters referenced therein and that the Bar must prove each and every allegation by clear and convincing evidence. See for example *The Florida Bar v. Calvo*, 630 So. 2d 548 (Fla. 1993); *The Florida Bar v. Vining*, 707 So. 2d 670 (Fla. 1998).

By: s/ Juan Carlos Arias
JUAN CARLOS ARIAS, ESQ.
Florida Bar No.: 0076414

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument was furnished by Electronic Service via the Florida Courts E-Filing Portal, this 9th day of January, 2023, to trial counsel lgryb@floridabar.org, orlandooffice@floridabar.org, and dsullivan@floridabar.org, The Florida Bar, 1000 Legion Place, Suite 1625, Orlando, Florida 32801-1050; and to Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399, psavitz@floridabar.org.

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