

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

BRIAN P. RUSH,

Respondent.

Supreme Court Case
No. SC-

The Florida Bar File
No. 2018-10,741 (13B)

COMPLAINT

The Florida Bar, complainant, files this complaint against Brian P. Rush, respondent, pursuant to the Rules Regulating The Florida Bar and alleges:

1. Respondent was admitted to The Florida Bar on November 1, 1982 and is subject to the jurisdiction of the Supreme Court of Florida.
2. The Thirteenth Judicial Circuit Grievance Committee “B” found probable cause to file this complaint pursuant to Rule 3-7.4, of the Rules Regulating The Florida Bar, and this complaint has been approved by the presiding member of that committee.
3. Beginning in or about September 2014, respondent represented two Florida limited liability companies, JT North Park, LLC and North Park Isles, PTC, LLC (the “Companies”) in an eminent domain/condemnation matter.

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4. The condemnation proceedings related to a portion of a property North Park Isles, PTC, LLC owned in Hillsborough County, Florida.

5. JT North Park, LLC was the manager of North Park Isles, PTC, LLC.

6. As of September 2014, JT North Park, LLC was owned by three managing members: Todd Taylor, Jack Suarez, and Robert Suarez (collectively, the “Members”).

7. On September 25, 2014, one of the managing members, Todd Taylor, signed an engagement agreement with respondent for representation of the Companies in the condemnation proceedings.

8. Mr. Taylor did not consult with the two other managing members before executing the engagement agreement with respondent.

9. Respondent’s engagement agreement provided that his attorney’s fees would be limited to the amount paid by the condemning authority.

10. Florida Statute Section 73.092 provide for attorney’s fees in eminent domain actions based on the benefits achieved by the attorney for the client as well as any nonmonetary benefits obtained for the client through the efforts of the attorney.

11. However, respondent’s engagement agreement also contained a termination provision that would require the Companies to pay the reasonable value of respondent’s services upon termination.

12. In May 2017, the State of Florida Department of Transportation (“FDOT”) initiated a condemnation action for the taking of the subject portion of the property owned by North Park Isles, PTC, LLC in Hillsborough County Case No. 2017-CA-4759.

13. On October 24, 2017, the court entered an order of taking in the condemnation action, and the only issue that remained was the valuation of the taking.

14. In August 2016, prior to the initiation of the condemnation action, North Park Isles, PTC, LLC had entered into a contract to sell the subject property to a local developer.

15. The condemnation action precluded the closing of the sale of the subject property.

16. In March 2018, the Members met with respondent to discuss the condemnation action and the sale of the property.

17. The Members advised respondent that their objective was to quickly settle the condemnation action so that the sale of the property could be completed.

18. Thereafter, disagreements began to arise between the Members and respondent regarding the objectives of the representation.

19. Respondent urged the Members to advance a damages claim that the portion of the property taken by the FDOT had limited access to the remainder of

the property, decreasing the value of the property and justifying an increase to the valuation of the taking.

20. The Members continued to assert that they did not want to advance the litigation and wished to proceed to settlement so the pending sale to the developer could be completed.

21. At a meeting in April 2018, respondent stated that if the Members refused to move forward with the litigation, respondent would implement the termination provision of the engagement agreement to seek his fees from the Companies instead of from the proceeds of the condemnation proceedings.

22. Thereafter, respondent filed a series of unauthorized pleadings which were repetitive in nature and designed to advance his own claim for attorney's fees instead of advancing the clients' objectives for the representation.

23. Between April and July 2018, respondent filed at least 10 different motions seeking recovery of his attorney's fees, despite the fact that attorney's fees were not yet at issue as the valuation of the taking had not been determined.

24. The Florida Statutes governing eminent domain proceedings do not permit interim awards of attorney's fees.

25. By filing these pleadings, respondent engaged in a conflict of interest by acting in a manner adverse to the Members' intentions to settle the condemnation proceedings.

26. The Members had hired another attorney, Richard Petitt, in April 2018 to advise them on the real estate issues in both the condemnation action and the sale of the subject property as respondent had told the Members he would not act as counsel for them on those issues.

27. In May 2018, at the Members request, Mr. Petitt filed a notice of appearance on behalf of the Companies in the condemnation action.

28. The court held a status conference on May 24, 2018 where both Mr. Petitt and respondent appeared.

29. At the status conference, Jack Suarez advised the court that the Members were afraid to terminate respondent due to respondent's threats to enforce the termination provision of the engagement agreement against the Members.

30. The presiding judge advised she would not advance the litigation until the Members decided which attorney would be representing them.

31. On July 3, 2018, the Companies terminated respondent's representation.

32. On July 10, 2018, respondent filed an amended motion seeking to withdraw from the case which again repeatedly asserted that, by virtue of the termination provision of the engagement agreement, the Companies may be liable for respondent's attorney's fees.

33. On July 12, 2018, the court entered an order granting respondent's withdrawal from the representation.

34. The July 12, 2018 order preserved respondent's ability to seek his attorney's fees at a later time.

35. Respondent continued to file pleadings in the condemnation action seeking recovery of his attorney's fees.

36. At another hearing in July 2018, respondent threatened to sue counsel for the FDOT for interfering with his ability to collect his attorney's fees and threatened to file a bar complaint against her.

37. Respondent also filed two separate lawsuits against the Companies, Hillsborough County Case Number 18-CA-7553, a breach of contract/arbitration lawsuit, and 18-CA-11050, a fraudulent transfer action.

38. On September 12, 2018 and October 24, 2018, respondent filed two lis pendens on the property.

39. The lis pendens were not valid as respondent had no ownership interest or other basis to encumber the subject property.

40. On October 26, 2018, the court entered an order dissolving both lis pendens.

41. Respondent also attempted to advance a claim that the Members, Mr. Petitt, and the FDOT engaged in a conspiracy to settle the case for a low amount and preclude respondent from recovering his fees.

42. The conspiracy claim was dismissed by the judge.

43. Respondent's actions impeded the Companies' ability to settle with the FDOT.

44. In November 2018, a settlement was reached between the Companies and FDOT, and the parties entered a stipulated final judgment in January 2019 in which the presiding judge retained jurisdiction over the matter of attorneys' fees.

45. After the judgment was entered, Mr. Petitt filed a motion on behalf of the Companies seeking payment of attorney's fees from the FDOT according to the calculation for the monetary benefit outlined by the eminent domain statutes.

46. Respondent contested the Companies' request for attorney's fees pursuant to the statutes and continued to assert his claim for fees.

47. Respondent failed to abide by the Companies' decisions concerning the objectives of the representation.

48. Respondent inserted himself into the FDOT litigation in an attempt to advance his own interests to the detriment of the Companies.

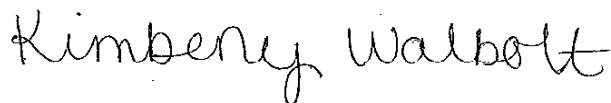
49. Respondent took an active, adverse interest against the Companies.

50. Respondent used the termination provision of the engagement agreement as a tool to threaten and intimidate not only the Companies, but also counsel for the FDOT and Mr. Petitt.

51. Respondent's actions delayed the conclusion of the FDOT proceedings and were prejudicial to the administration of justice.

52. By reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: **Rule 4-1.2** (Objectives and Scope of Representation); **Rule 4-1.4** (Communication); **Rule 4-1.5** (Fees and Costs for Legal Services); **Rule 4-1.7** (Conflict of Interest; Current Clients); **Rule 4-3.1** (Meritorious Claims and Contentions); **Rule 4-3.4** (Fairness to Opposing Party and Counsel); and **Rule 4-8.4** (Misconduct).

WHEREFORE, The Florida Bar prays respondent will be appropriately disciplined in accordance with the provisions of the Rules Regulating The Florida Bar as amended.



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CERTIFICATE OF SERVICE

I certify that this document has been E-filed with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, with a copy provided via email to Brian P. Rush, Respondent, c/o Dale Ralph Sisco, Respondent's Counsel at dsisco@sisco-law.com; and that a copy has been furnished by United States Mail via certified mail No. 7017 3380 0000 1082 7539, return receipt requested to Dale Ralph Sisco, whose record bar address is Dale R. Sisco, P.A dba Sisco Law 1110 N Florida Ave, Tampa, FL 33602-3343 and via email to Kimberly Anne Walbolt, Bar Counsel, kwalbolt@floridabar.org, on this 17th day of November, 2020.



Patricia Ann Toro Savitz
Staff Counsel

NOTICE OF TRIAL COUNSEL
AND DESIGNATION OF PRIMARY EMAIL ADDRESS

PLEASE TAKE NOTICE that the trial counsel in this matter is Kimberly Anne Walbolt, Bar Counsel, whose address and telephone number are The Florida Bar, Tampa Branch Office, 2002 N. Lois Ave., Suite 300, Tampa, Florida 33607-2386, (813) 875-9821, and whose primary email address is kwalbolt@floridabar.org and secondary emails are yserralta@floridabar.org and tampaoffice@floridabar.org. Respondent need not address pleadings, correspondence, etc. in this matter to anyone other than trial counsel and to Patricia Ann Toro Savitz, Staff Counsel, The Florida Bar, 651 E Jefferson Street, Tallahassee, Florida 32399-2300, psavitz@floridabar.org.

MANDATORY ANSWER NOTICE

RULE 3-7.6(h)(2), RULES REGULATING THE FLORIDA BAR,
PROVIDES THAT A RESPONDENT SHALL ANSWER A COMPLAINT.