

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

v.

EMELIKE NWOSUOCHA,
Respondent.

Supreme Court Case
No. SC22-1776

The Florida Bar File
No. 2022-70,096(11A)

REPORT OF REFEREE

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 December 20, 2022, The Florida Bar filed its Complaint and Request for Admissions in these proceedings.

On January 10, 2023, The Florida Bar filed its Motion for Default as a result of respondent's failure to Answer the bar's Complaint.

On February 2, 2023, a case management conference took place, at which time this referee granted respondent additional time to file his Answer to the bar's Complaint.

On February 6, 2023, the Florida Bar filed its Motion for Order Deeming Matters Admitted due to respondent's failure to file a response to the bar's Request for Admissions.

On February 7, 2023, the referee entered an order granting The Florida Bar's Motion for Deeming Matters Admitted.

On February 10, 2023, as a result of respondent's failure to timely file an Answer despite this referee's extending the time for him to do so, the referee entered an order granting The Florida Bar's Motion for Default.

It is noted that respondent untimely filed an Answer and Affirmative Defenses, as well as a Response to The Florida Bar's Request for Admissions, subsequent to entry of the Orders of Default and Deeming Matters Admitted. Additionally, respondent filed a Motion to Vacate Default which was not served on bar counsel and of which she was unaware, although the certificate of service represents that it was served on Staff Counsel for The Florida Bar. This referee denied said Motion at the time of Final Hearing having concluded that there was no excusable neglect.

On May 1, 2023, a final hearing as to discipline only was held in this matter. All items properly filed including pleadings, recorded testimony (if transcribed), exhibits in evidence, and the report of referee constitute the record in this case and are forwarded to the Supreme Court of Florida.

II. FINDINGS OF FACT

Jurisdictional Statement. Respondent is and was, at all times mentioned herein, a member of The Florida Bar, and subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida.

Narrative Summary:

Respondent, the attorney for Ms. Ana Diaz, filed a lawsuit in Miami-Dade County, Case Number 2017-027045-CA-01, on November 22, 2017, against defendants Dr. Johnny Salomon and Med Spa, for medical negligence under Florida Statute 766.110.

On July 15, 2019, the trial court in Diaz's lawsuit denied plaintiff's Motion for Default and granted Dr. Salomon's Motion to Dismiss with prejudice, reserving jurisdiction to assess attorney's fees and costs if found to be applicable.

On July 29, 2019, respondent appealed the trial court's decision to the Third District Court of Appeal in Case Number 3D19-1471.

On April 22, 2020, the Third District Court of Appeal per curiam affirmed the lower court's dismissal and awarded Dr. Salomon attorney's fees, remanding the matter back to the trial court to fix the amount.

On March 24, 2021, the trial court issued an order awarding Dr. Salomon attorney's fees in the amount of \$5,310.00, with same to be paid

by plaintiff's counsel, Emelike Nwosuocha. In assessing attorney's fees, the trial court found that the complaint filed by respondent was not supported by application of then-existing law to the material facts plead.

Respondent failed to pay the \$5,310.00 awarded to the defendant and on August 24, 2021, Dr. Salomon filed a grievance against respondent with The Florida Bar alleging that he attempted to collect the attorney's fees from respondent but was unsuccessful.

In his response to The Florida Bar, respondent stated that he did not know why he was being charged the attorney's fees and argued that he had not filed a frivolous lawsuit on behalf of Ms. Diaz.

III. DISCUSSION

The referee notes that respondent was provided an opportunity to address the court despite entry of default and deeming matters admitted. In this regard, the referee notes that he was unmoved as to respondent's arguments of not being "willful" with respect to his conduct. Rather, this referee would describe the conduct as "willful blindness."

IV. RECOMMENDATIONS AS TO GUILT

I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar:

4-3.4(c) A lawyer must not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

4-8.4(a) A lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.

V. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

6.2 ABUSE OF THE LEGAL PROCESS

6.2(b) Suspension is appropriate when a lawyer knowingly violates a court order or rule and causes injury or potential injury to a client or a party or causes interference or potential interference with a legal proceeding.

700 VIOLATIONS OF OTHER DUTIES OWED AS A PROFESSIONAL

7.1(b) Suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

VI. CASE LAW

I considered the following case law prior to recommending discipline:

The Florida Bar v. Marcellus, 249 So.3d 538 (Fla. 2018)

The Florida Bar v. Rosenberg, 169 So.3d 1155 (Fla. 2015)

The Florida Bar v. Bischoff, 212 So.3d 312 (Fla. 2017)

The Florida Bar v. Tobin, 674 So.2d 127 (Fla. 1996)

The Florida Bar v. Committee, 136 So.3d 1111 (Fla. 2005)

The Florida Bar v. Bloom, 632 So.2d 1016 (Fla. 1994)

The Florida Bar v. Gersten, 707 So.2d 711 (Fla. 1998)

The Florida Bar v. Dubow, 636 So.2d 1287 (Fla. 1994)

VII. AGGRAVATING AND MITIGATING FACTORS

I find the following factors in aggravation as identified in The Florida Standards for Imposing Lawyer Sanctions:

- Dishonest or selfish motive;
- Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency (as indicated by respondent's failure to Answer the bar's Complaint within the deadline imposed by this referee);
- Refusal to acknowledge the wrongful nature of his conduct;
- Vulnerability of the victim;

- Substantial experience in the practice of law (respondent was admitted in 2008);
- Indifference to making restitution;
- The referee further notes respondent's pattern of not complying with court orders as indicated by the findings of fact in this case and his failure to abide by this referee's order with respect to his untimely filing of an Answer and Response to Request for Admissions.

I find the following factors in mitigation as identified in The Florida Bar Standards for Imposing Lawyer Sanctions:

- absence of a prior disciplinary record.

VIII. 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. 6-months suspension.
- B. Payment of The Florida Bar's costs in these proceedings.

Respondent will eliminate all indicia of respondent's status as an attorney on email, social media, telephone listings, stationery, checks, business cards, office signs, or any other indicia of respondent's status as an attorney, whatsoever.

IX. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-7.6(m)(1)(D), I considered the following:

Personal History of Respondent:

Age: 63

Date of admission: November 29, 2008

Prior discipline: None

X. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

The Florida Bar, having been successful in this matter, shall be awarded their necessary taxable costs and shall submit their statement of costs, as well as a motion to assess costs, against respondent.

Dated this 18th day of May, 2023.

/S/ WILLIAM IRA ALTFIELD
William Ira Altfield, Referee

Original To:

Clerk of the Supreme Court of Florida; Supreme Court Building; 500 South Duval Street, Tallahassee, Florida, 32399.

Conformed Copies to:

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