

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

DAVID W. VELIZ,

Respondent.

Supreme Court Case
No. SC-

The Florida Bar File
No. 2023-30,408 (9C)

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COMPLAINT

The Florida Bar, complainant, files this Complaint against David W. Veliz, respondent, pursuant to the Rules Regulating The Florida Bar and alleges:

1. Respondent is and was at all times mentioned herein a member of The Florida Bar admitted on May 1, 1990 and is subject to the jurisdiction of the Supreme Court of Florida.

2. Respondent practiced law in Orange County, Florida, at all times material.

3. The Ninth Judicial Circuit Grievance Committee "C" 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.

4. A long time-family friend hired respondent to draft estate planning documents that named respondent's sister as a beneficiary and his mother as a beneficiary and as personal representative for the estate.

5. Respondent also was hired to act as a real estate agent to sell her single-family home.

6. Respondent's law partner was retained to handle the probate of the client's estate and respondent's mother was paid her personal representative's fee despite respondent's failure to comply with the statute in effect at the time regarding the disclosure of compensation for the personal representative.

7. At all times material, respondent and attorney Norberto Sergio Katz operated a law firm known as Veliz and Katz Law where respondent was the managing partner.

8. Respondent's practice consisted primarily of family law matters and some probate work.

9. Respondent also was a licensed real estate agent at all times material.

10. In or around 2018, Blanca Kokot, a long-time close friend of respondent's mother, consulted with respondent regarding her estate planning and her desire to sell her single-family home and move into an

assisted living facility due to her advanced age of about 93 and the fact that she lived alone in her home.

11. Ms. Kokot advised respondent she intended to hire him as her real estate agent to sell her home once she was able to move into the assisted living facility. Because the assisted living facility Ms. Kokot intended to move to was under construction, she was not yet in a position to act on the plan she discussed with respondent.

12. In 2019, Ms. Kokot returned to respondent's office for the purpose of proceeding with the previously discussed estate plan.

13. Respondent had prepared the Last Will and Testament for Ms. Kokot, naming respondent's mother and sister as beneficiaries and named his mother as personal representative for the estate.

14. At the time she consulted with respondent and executed her will, Ms. Kokot had no close living family members, had known respondent and his family for a number of years and was a long-time close friend of respondent's mother but was in no manner related to either respondent or his family.

15. Respondent failed to obtain written informed consent for the appointment of respondent's mother as personal representative as required under Rule 4-1.8 of the Rules Regulating The Florida Bar.

16. In 2021, Ms. Kokot contacted respondent and advised that she wanted to make some changes to her will.

17. Respondent drafted the revised will for Ms. Kokot that also named respondent's mother and sister as beneficiaries and named his mother as personal representative for the estate.

18. Ms. Kokot executed her revised will on June 30, 2021.

19. Respondent again did not advise Ms. Kokot to seek the advice of independent counsel regarding the beneficiaries nor did he obtain written informed consent as required under Rule 4-1.8 and the amended Florida Statute § 733.617(8) (2020).

20. In or around the fall of 2021, Ms. Kokot hired respondent to list her home for sale in preparation for her move into the assisted living facility.

21. Respondent presented Ms. Kokot with the standard real estate listing agreement and associated documents, which she completed. The agreement provided that respondent's real estate commission was the standard 3% to 3.5%.

22. Respondent did not advise Ms. Kokot to seek the advice of independent counsel prior to executing the listing agreement document

with the real estate company with which respondent was affiliated as a real estate agent.

23. Respondent acted as a real estate agent for other clients of his law firm over the years.

24. Ms. Kokot's home was under contract to be sold at the time of her death on or about November 20, 2021.

25. Thereafter, respondent's mother, who was named as the personal representative in the will, hired respondent's law partner, Norberto Sergio Katz, to file the petition for administration of Ms. Kokot's will which occurred on or about December 1, 2021.

26. The probate court appointed respondent's mother as the personal representative.

27. In her capacity as personal representative of the estate, respondent's mother executed the deed conveying Ms. Kokot's home and respondent received payment of the standard real estate agent commission for the sale.

28. During the probate of the estate, several of the named beneficiaries retained counsel and notified Mr. Katz that they believed some of the beneficiaries were family members of respondent, whom they learned had drafted Ms. Kokot's will. These beneficiaries, who were distant

relatives of Ms. Kokot, were concerned about the appearance of impropriety due to respondent's inclusion of his family members in Ms. Kokot's will.

29. Thereafter, respondent's mother and sister were removed as beneficiaries based on Mr. Katz's recommendation. Because the appointment of respondent's mother as personal representative was not contested by any of the remaining beneficiaries, she remained as the personal representative for the estate.

30. Regarding Ms. Kokot's revised 2021 will, respondent's mother was not entitled to compensation as personal representative for the estate because respondent failed to comply with the requirements of Florida Statute §733.617(8) (2020), which required a written disclosure and signature of the testator as to compensation for the personal representative.

31. Despite this fact, respondent's mother was paid \$19,241.43 for her services as the Personal Representative for the estate.

32. Respondent advised that he was unaware regarding the amendment in 2020 of Florida Statute §733.617(8) and unaware that he was prohibited from creating a will for a non-related client naming his relatives as beneficiaries.

33. By reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar:

(a) 3-4.3 The standards of professional conduct required of members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration of certain categories of misconduct as constituting grounds for discipline are not all-inclusive nor is the failure to specify any particular act of misconduct be construed as tolerance of the act of misconduct. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice may constitute a cause for discipline whether the act is committed in the course of the lawyer's relations as a lawyer or otherwise, whether committed within Florida or outside the state of Florida, and whether the act is a felony or a misdemeanor.

(b) 4-1.1 A lawyer must provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

(c) 4-1.7(a) Except as provided in subdivision (b), a lawyer must not represent a client if: (1) the representation of 1 client will be directly adverse to another client; or (2) there is a substantial risk that

the representation of 1 or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(d) 4-1.7(b) Notwithstanding the existence of a conflict of interest under subdivision (a), a lawyer may represent a client if: (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client; (2) the representation is not prohibited by law; (3) the representation does not involve the assertion of a position adverse to another client when the lawyer represents both clients in the same proceeding before a tribunal; and (4) each affected client gives informed consent, confirmed in writing or clearly stated on the record at a hearing.

(e) 4-1.8(c) A lawyer is prohibited from soliciting any gift from a client, including a testamentary gift, or preparing on behalf of a client an instrument giving the lawyer or a person related to the lawyer any gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this subdivision, related persons include a spouse, child, grandchild, parent, grandparent, or other relative with whom the lawyer or the client maintains a close, familial relationship.

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



Carrie Constance Lee, Bar Counsel
The Florida Bar
Orlando Branch Office
The Gateway Center
1000 Legion Place, Suite 1625
Orlando, Florida 32801-1050
(407) 425-5424
Florida Bar No. 552011
clee@floridabar.org
orlandooffice@floridabar.org



Elizabeth Clark Tarbert
Serving as Staff Counsel
The Florida Bar
651 East Jefferson Street
Tallahassee, FL 32399-2300
(850) 561-5839
Florida Bar No. 861294
etarbert@floridabar.org

CERTIFICATE OF SERVICE

I certify that this document has been efiled with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, with a copy provided via email to Thomas Devlin Sommerville, Counsel for respondent, at tom@sommervillelaw.com; and that a copy has been furnished by United States Mail via certified mail No. 7020 1810 0000 0813 5499, return receipt requested to Thomas Devlin Sommerville, whose record bar address is 820 North Thornton Avenue, Orlando, Florida 32803-4003 and via email to Carrie Constance Lee, Bar Counsel, clee@floridabar.org, on this 8th day of December, 2023.

A handwritten signature in black ink, reading "Elizabeth Clark Tarbert". The signature is written in a cursive, flowing style.

Elizabeth Clark Tarbert
Serving as Staff Counsel

NOTICE OF TRIAL COUNSEL AND DESIGNATION OF PRIMARY EMAIL ADDRESS

PLEASE TAKE NOTICE that the trial counsel in this matter is Carrie Constance Lee, Bar Counsel, whose address, telephone number and primary email address are The Florida Bar, Orlando Branch Office, The Gateway Center 1000 Legion Place, Suite 1625 Orlando, Florida 32801-1050, (407) 425-5424 and clee@floridabar.org, orlandooffice@floridabar.org. Respondent need not address pleadings, correspondence, etc. in this matter to anyone other than trial counsel and to Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, etarbert@floridabar.org.

MANDATORY ANSWER NOTICE

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