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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

GREGORY SALDAMANDO,

Respondent.

______________________________/

Supreme Court Case
No. SC-

The Florida Bar File
No. 2019-70,685(11C)

COMPLAINT

The Florida Bar, complainant, files this Complaint against Gregory Saldamando, 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 September 21, 2007 and is subject to the jurisdiction of the Supreme Court of Florida.

2. Respondent is an associate of the Strems Law Firm, P.A. ("SLF"), the principal office of which is located in Miami-Dade County, Florida.

3. Respondent resided and practiced law in Miami-Dade County, Florida, at all times material.

4. The Eleventh 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.

Introduction

5. The thrust of this case is simple: respondent betrayed his ethical obligations to his clients in order to enrich himself at the clients' expense.

6. While the full pattern of respondent's misconduct is too expansive to summarize in a paragraph, the central issue is this:

   a. Based upon respondent's representations, his clients agreed to accept a settlement of $100,000.00, approving a fee of $35,000.00 for SLF, with the balance of $65,000.00 going to the clients.

   b. Without the clients' knowledge or approval, respondent secured and finalized a second global settlement of $157,500.00.

   c. Without the clients' knowledge or approval, respondent did not allocate any of the increased settlement amount to the clients. Instead, respondent allocated a fee of $92,500.00 for his firm, while allocating only the client's original authority ($65,000.00) to the clients.

7. Mr. Alvarez provides a rather apt characterization of this case in his complaint, alleging:

> [Respondent] attempted to conceal the settlement to manipulate us into agreeing to a lesser amount, with the objective of acquiring higher fees for himself. He does not act within his professional duties as an adviser and a negotiator that seeks the advantage of his client. He is not prompt to maintain communication and demands fees that are unreasonable and based on misrepresentations.

Exhibit A, p. 2.

8. In the course of this misconduct, respondent committed a litany of ethical violations as detailed below.

9. Throughout the Florida Bar's investigation, respondent has maintained that "the matter settled for the sum authorized by the clients with a later negotiation with the insurance company for attorney's fees and costs… ." Exhibit R, p. 4. As the evidence will show, this statement was false. There was never any separate negotiation or settlement of attorney's fees; the Clients' case was settled on a global basis (*i.e.*, a single lump-sum settlement to cover the Clients' damages and attorney's fees).

10. Furthermore, this pattern of misconduct is remarkably similar to that described in *The Florida Bar v. Scot Strems*, Case No. SC20-806 (the "Nowak Case").[1] In that case (as in this one), SLF obtained bottom-liminal authority from its client based on one settlement offer, negotiated a second, far higher settlement offer *without* notifying the client, and then attempted to keep 100% of the settlement proceeds above the original minimal authority.

The Underlying Lawsuit and Disputed Settlement

11. On or about May 20, 2014, Eduardo Alvarez and Doris Herrera (together, the "Clients") hired SLF to represent them a sinkhole claim against their

[1] A notice of related case will shortly follow this complaint.

homeowner's insurance company, American Integrity Insurance Company of Florida, Inc. ("American Integrity"). *See generally* Exhibit A; Exhibit B.

12. On that date, Clients signed a Contingent Fee Retainer Agreement (the "Retainer Agreement") with SLF, which includes the following relevant language:

> 1. **<u>ATTORNEY'S FEES – CONTINGENT ON RECOVERY:</u>** This employment is on a contingent fee basis. If no recovery is made for, or on behalf of the Client, **THE CLIENT SHALL NOT PAY ATTORNEYS' FEES** for any of the professional services rendered in reference to this matter by the Attorney. From the gross proceeds of any recovery prior to litigation (pre-litigation), the attorney shall be entitled to receive the following legal fee, and client assigns to Firm 20% of the whole amount recovered (including recoverable depreciation, overhead and profit, and/or claims that are to be charged from dollar one less deductible), or 5% in the event said whole amount is recovered via invocation of appraisal. Note: The Policyholder is responsible for half of the appraisal expenses, where applicable.
>
>   a. **<u>Litigation/Breach of Contract Actions</u>:** Client hereby authorizes this Firm to file suit against Client's insurance carrier should said carrier deny, reject or under-pay Client's claim. If the payment of reasonable attorneys fees, to be paid by the Insurance Company is required to be determined by the Court or if settlement is achieved via negotiation with the Insurance Company, Attorney shall be entitled to receive all of such attorneys' fees, including any and all contingency risk factor multipliers awarded by the Court, or, if a settlement includes an amount for Attorneys' fees, Attorney shall be entitled to receive all of its expended and/or negotiated fees; further, pursuant to 627.428, Florida Statutes, the Insurance Company is solely responsible to pay for the Client's attorneys' fees when and if, the Client prevails against the Insurance Company. **NO RECOVERY, NO FEE.**

2. **<u>EXPENSES</u>**: In addition to legal fees, Attorney is entitled to receive all court costs and expenses incurred by Attorney in reference to this matter. Attorney shall have the authority, but shall not be obligated to make advances of these expenses on behalf of Client in such amounts as Attorney shall determine best in representing Client in the matter. Any and all such expenses incurred on Client's behalf shall be deducted from Client's net proceeds of recovery, after deducting the fees due Attorney from the gross recovery. Client agrees that in the event of a fee payment dispute, Attorney may file a charging lien to recover its outstanding attorneys' fees and costs. Client agrees that Attorney shall engage, at Attorney's sole discretion, professionals to render services on behalf of Client, including but not limited to experts, consultants and public adjusters. Client shall pay such professionals based on their reasonable hourly fee charge; however, in the event no money is recovered for Client, no payments shall be due to those professionals for their service.

Exhibit B, pp. 1-2 (emphasis in original).

13. The Retainer Agreement includes a 20% contingency fee for "pre-litigation" settlements, but does not include any contingency fee percentage for matters resolved in litigation. *See ibid.*

14. The Retainer Agreement does not include any explanation as to how SLF's fees would be calculated. It does not explain how many attorney(s) would be assigned to the file, nor does it explain their hourly rates. *See ibid*.

15. SLF retained GM & Associates Group ("GMAG") to provide an estimate of the Clients' damages. According to GMAG's estimate summary, the Clients suffered some $145,874.44 in damages. *See* Exhibit C. Clients estimate their total damages were somewhat higher at $180,000.00. *See* Exhibit U, p. 1.

16. At all times relevant, respondent was lead counsel for the Clients' case.

17. On or about July 7, 2014, SLF filed suit against American Integrity on behalf of the Clients.

18. On April 5, 2019, respondent received an e-mail from Benjamin Keener (counsel for American Integrity) confirming the insurer's offer for a global settlement of "$50,000 inclusive of all fees, costs and interest." Exhibit D. This offer was made as a statutory Proposal for Settlement.

19. The $50,000.00 settlement offer was communicated to the Clients via a form letter dated April 24, 2019. *See* Exhibit E.

20. In a phone conversation on or about April 30, 2019, respondent advised Ms. Herrera that American Integrity had increased their settlement offer to $100,000.00. *See* Exhibit A, p. 1.

21. Respondent further encouraged and advised Ms. Herrera to accept $65,000.00[2] of this $100,000.00 in order to settle the case. *See* Exhibit A, p. 2. As explained by Mr. Alvarez:

> After some back and forth in that conversation, [Ms. Herrera] explained that he necessary repairs were projected to be over $90,000, but based on Mr. Saldamando's feedback regarding his necessary fees plus the possibility of losing the case if it

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[2] The clients would still need to pay the public adjuster fee of 15% from this amount, which would ultimately leave them with $55,250.00.

> went to trial, [Ms. Herrera] agreed to accept $65,000 out of the $100,000.

Exhibit A, p. 2.

22. Respondent subsequently continued negotiations with American Integrity.

23. On May 7, 2019, Mr. Keener e-mailed respondent to "confirm our agreement to resolve this matter globally for the sum of $157,500…" Exhibit F, p. 6. In a follow-up e-mail that same day, Mr. Keener wrote "[t]o be perfectly clear, this global agreement is inclusive of any and all indemnity claims, extra contractual claims, fees, costs and interest." *Id.*, p. 5.

24. Respondent never advised the Clients of the $157,500.00 global settlement offer before he accepted it.

25. On May 8, 2019, respondent e-mailed Ms. Herrera to confirm their earlier conversation regarding the Clients' $65,000.00 authority. *See* Exhibit G. In this e-mail, respondent did not advise Ms. Herrera or Mr. Alvarez of the $157,500.00 settlement offer, or the fact that he had already accepted it.

26. The Clients made no reply to respondent's May 8, 2019 e-mail "because there was no information regarding the settlement amount or its terms. We expected Mr. Saldamando to contact us and provide a written Proposal for Settlement." Exhibit A, p. 2.

27. On May 14, 2019, American Integrity filed a Notice of Settlement. *See generally* Exhibit H.

28. The Clients reviewed the Notice of Settlement on May 14 or May 15, and for the first time became aware that their case had been settled. *See* Exhibit K, p. 1.

29. On May 15, 2019, the Clients visited respondent's office to speak to him in person and to review the settlement paperwork. *See* Exhibit A, p. 2. The Clients were instead met by a paralegal who advised them that respondent was unavailable. *See ibid.*

30. At this May 15, 2019 visit to SLF's office, the Clients requested a copy of their file, but were only given a single document that they already possessed. *See id.*, pp. 2-3. The Clients were not provided any settlement documents at this time, nor were they given an itemized statement of SLF's fees and costs.

31. On May 16, 2019, the Clients noticed that their case had been closed. *See generally* Exhibit I. At that time, the Clients had still not heard from respondent regarding the terms of the settlement or the ultimate settlement sum. *See* Exhibit A, p. 3.

32. On May 20, 2019, respondent spoke to Mr. Alvarez by telephone, and advised—for the first time—that the case had been settled for $157,500.00. *See*

Exhibit A, pp. 1, 3. Respondent further advised that the Clients would only receive $65,000.00 of that amount. *See id.*, p. 3. Again, respondent declined to share an itemized statement of his fees with the Clients. *See ibid.*

33. The Clients then made an appointment to speak in person with respondent on May 24, 2019, but respondent canceled that meeting via a text message sent at 10:00 PM the night before. *Id.*, p. 3. Mr. Alvarez sent another e-mail to respondent requesting a copy of the settlement documents and a breakdown of attorney's fees, but these documents were not provided. *Ibid.*

34. After Mr. Alvarez called respondent on May 29, 2019, respondent finally provided the e-mail from Mr. Keener confirming the global settlement of $157,500.00. *See* Exhibit J.

35. Later that same day, the Clients went again to meet respondent at his office. *See* Exhibit A, p. 3. Again, the Clients expressed that while they had previously agreed to accept $65,000.00 of a proposed $100,000.00 settlement, they had not agreed to accept that same amount from a settlement offer of $157,500.00, which respondent never related to them. *See* Exhibit A, p. 3. During this meeting, the Clients further explained that "it was unreasonable for us to set a bottom line for ourselves instead of a bottom line for him." *Ibid.*

36. During this appointment, the Clients further allege that respondent "indicated the insurance and the opposing law firm would not agree to anything other than $65,000 amount of settlement toward us… ." *Ibid.*

37. Following their meeting on May 29, 2019, respondent wrote an e-mail to Mr. Alvarez. *See* Exhibit K. In this e-mail, respondent confirms the following facts:

a. Ms. Herrera only agreed to accept $65,000.00 at the repeated urging of respondent. *See id.*, p. 2 ("[Ms. Herrera] initially indicated higher amounts clean to her but after several phone calls your wife reduced her bottom line to the last figure of $65,000.").

b. Respondent never in fact intended to accept the $100,000.00 global settlement upon which the Clients' authority was predicated. *See id.*, p. 2 ("At no time did I say we were going to settle for $100,000 global.").

c. At all times, respondent was aware that American Integrity would only entertain a settlement on a global basis. *See id.*, p. 1 ("I made it very clear to [Ms. Herrera] that the insurance company was insisting on settling the case globally…").

38. Shortly after, Mr. Alvarez responded with the following:

> Again, we have several disagreements stemming from the fact that you have failed to provide proper notifications and your actions created conflicts of interest. To be clear, you settled the case for 157,500 without informing and consulting with us. Throughout the negotiations you only communicated aspects of the process to my wife which in-turn misrepresented the facts. She agreed to $65,000 out of $100,000 global based on the skewed picture you provided. That conversation took place on May 7, 2019 and we did not hear anything further from you. On May 15, we visited your office seeking answers after noticing the case was reported settled on public records.

Ibid.

39. As of May 31, 2019, the Clients had still not been provided the settlement documents. *See* Exhibit A, p. 4.

40. On June 11, 2019, Mr. Keener sent a letter to respondent confirming, among other things, that "Eduardo Alvarez & Doris Herrera and American Integrity reached an agreement to resolve this matter globally for $157,500.00 inclusive of any and all indemnity claims, extra contractual claims, fees, costs and interest, payable at your clients' direction…" Exhibit L, p. 1. The letter makes no mention of any separately negotiated fee.

41. Mr. Keener's June 11, 2019 letter was accompanied by a draft Global Release of Claims and Settlement Agreement (the "Global Release"). *See generally* Exhibit M. The Global Release contemplates a single lump-sum payment of $157,500.00 as consideration for the Clients' release. *See id.*, ¶ 2. The Global Release naturally makes no mention of any bifurcated or separately-negotiated fee.

42. On June 18, 2019, respondent filed a Motion to Withdraw as Counsel for Plaintiff, citing "[i]rreconcilable differences" that had arisen between respondent, SLF, and the Clients. Exhibit N.

43. Having received no executed settlement documents, American Integrity filed a Motion to Enforce Final Settlement Agreement on October 23, 2019. *See* Exhibit O.

44. On December 12, 2019, the court entered an Order Requiring Disputed Funds Into Registry of Court, in which the court noted "a dispute between Mr. and Mrs. Alvarez and the Strems Law Firm." Exhibit P. The court then directed that $80,000.00 of the settlement proceeds be paid into the court's registry.[3] *Ibid.*

45. That same day, the court finally granted respondent's Motion to Withdraw. *See* Exhibit Q.

46. The Florida Bar first notified respondent of the Clients' complaint on or about June 5, 2019. On July 1, 2019, respondent answered the complaint by a letter from his counsel. *See generally* Exhibit R.

47. The July 1, 2019 letter also contains misleading statements of fact, such as the following:

> It is routine practice in first party insurance claims that after an amount is agreed to for settlement of the plaintiffs' claim in suit, a second negotiation occurs with the insurance company for payment of the attorney's costs and fees.

Ibid. This statement clearly implies that respondent engaged in this type of bifurcated, indemnity-then-attorney's-fee negotiation, but that is utterly untrue. There is no evidence at all that such negotiations took place. Rather, all the documentary evidence establishes that the case was settled on a global basis, *i.e.* as

[3] To the knowledge of the Florida Bar, $80,000.00 of the settlement proceeds still remain in the court registry.

a single lump-sum payment inclusive of the Client's damages and fees. For example:

a. In his May 7, 2019 e-mail to respondent, Mr. Keener expressly confirmed the "agreement to resolve this matter globally for the sum of $157,500… ." Exhibit F, p. 6.

b. Mr. Keener again confirmed the global settlement in his June 11, 2019 letter. *See* Exhibit L, p. 1.

c. The Release was likewise written in unequivocally global terms. *See* Exhibit M, p. 1.

d. Respondent himself expressly told the Clients that "this was case [sic] settled…with the global amount being $157,500." Exhibit K, p. 1.

48. Respondent reiterates this false claim again, stating that "the matter settled for the sum authorized by the clients with a later negotiation with the insurance company for attorney's fees and costs which again standard and set forth directly in the contingency retainer agreement." Exhibit R, p. 4. Again, this statement is false for all the reasons given in the paragraph above.

49. On December 17, 2019, the Florida Bar wrote to respondent to request specific documents relating to the instant matter, including documents relating to SLF's fees in this matter. *See generally* Exhibit S. Respondent replied on January 17, 2020, providing (for the first time) a copy of the invoice in this matter. *See generally* T.

50. According to the invoice, respondent charged an hourly rate of $550.00. *See generally id.* Co-counsel charged as much as $750.00 per hour. *See id.*, p. 9. None of this was disclosed in the Retainer.

51. Furthermore, while respondent claims "in excess of $200,000 in attorney's fees and costs," the invoice only totals $108,125.00 in fees. *Compare* Exhibit R, p. 2 *with* Exhibit T, p. 26. The invoice also includes some costs, but the costs are not totaled and include unclear entries such as a charge of $5,508.95 for a payment relating to a "bundle of invoices together." *See* Exhibit T, pp. 26-27.

52. On February 27, 2020, respondent was interviewed by the investigating member of the grievance committee in the presence of counsel. *See* Exhibit U, p. 2. The investigating member explains that:

> [I]t was his position that he could globally settle the indemnity claim for property damages and the attorneys' fee claim for any amount as long as he arranged to provide the Clients with the amount that they had authorized him to obtain for them--$65,000. He conceded that if instead of negotiating a total recovery of $157,500, he had obtained a recovery of $165,000, he would have taken one hundred percent of the excess as an additional attorneys' fee. I asked what would have happened if the offer was $250,000 instead of $157,500. He said that since that amount would have been in [] excess of his firm's and his co-counsel claimed attorneys' fees, he would assume his firm would give more money to the clients than the $65,000, but was not sure since a situation like that had never occurred before.

Exhibit U, p. 4.

53. Accordingly, respondent admits that he placed his firm's financial interest ahead of his ethical obligation to the Clients.

Evidence of a Broader Pattern of Conduct

54. The misconduct alleged in this complaint was not the product of an isolated indiscretion. Rather, respondent's course of conduct was part and parcel of SLF's day-to-day practices.

55. In respondent's July 1, 2019 letter to the Florida Bar, respondent made it clear that the course of action described in this complaint is the standard operating procedure for SLF. Specifically:

> Valuation of the case had been continuously discussed with the clients and as is the practice of The Strems Law Firm, the clients were questioned regarding an amount that they would receive "net to them" to settle the case. **This is standard practice for The Strems Law Firm** regarding settlement of first party insurance cases …

Exhibit R, p. 2 (emphasis supplied).

56. Respondent reiterates this admission later in the letter, when he explains that "this matter was handled in the ordinary course by The Strems Law Firm… ." *Id.*, p. 4.

57. In his February 27, 2020 interview with the investigating member, respondent explained that he had never obtained a settlement that resulted in his client obtaining more than their original, minimum authority. Exhibit U, p. 4 ("I asked what would have happened if the offer was $250,000… [respondent] would

assume his firm would give more money to the clients than the $65,000, but was not sure since a situation like that had never occurred before.”).

Rule Violations

58. By reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: 4-1.2 (Objectives and Scope of Representation); 4-1.4 (Communication); 4-1.5 (Fees and Costs for Legal Services); 4-1.7 (Conflict of Interest; Current Clients); 4-1.8 (Conflict of Interest; Prohibited and Other Transactions); and 4-8.4(a) and (c) (Misconduct and Minor 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 efiled with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, with a copy provided via email to Mark Alan Kamilar, attorney for respondent, at kamilar@bellsouth.net; and that a copy has been furnished by United States Mail via certified mail No. 7017 3380 0000 1082 8345, return receipt requested, to Mark Alan Kamilar, whose record bar address is 2921 SW 27th Ave., Miami, Florida 33133-3703 and via email to John Derek Womack, Bar Counsel, jwomack@floridabar.org, on this 11th day of June, 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 John Derek Womack, Bar Counsel, whose address, telephone number and primary email address are The Florida Bar, Miami Branch Office, 444 Brickell Avenue, Rivergate Plaza, Suite M-100, Miami, Florida 33131-2404, (305) 377-4445 and jwomack@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 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.