

IN THE SUPREME COURT OF FLORIDA
(before a Referee)

FILED
SID. J. WHITE

OCT 19 1990

CLERK, SUPREME COURT

BY Deputy Clerk

THE FLORIDA BAR)
re Petition for Reinstatement of)
KEITH A. SELDIN)

Case #75,212
Florida Bar File #
90-50, 791 (15E-FRE)

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

Pursuant to the undersigned being duly appointed as Referee for the Supreme Court of Florida to conduct a reinstatement proceeding pursuant to Rule 3-7.9 of the Rules Regulating the Florida Bar, a final hearing was held on July 20, 1990 in Fort Lauderdale, Broward County, Florida.

All the pleadings, notices, motions, orders, transcripts and exhibits are forwarded with this report and the foregoing constitutes the record of this case.

The Florida Bar was represented in this proceeding by David Barnovitz, and Nicholas R. Friedman represented the Petitioner, Keith A. Seldin. The Florida Bar presented no witnesses at the time of trial.

The Respondent testified personally at the time of trial and in addition thereto presented testimony of attorney Scott Kramer, attorney William Fleck, attorney Joel Cronin, Representative James C. Hill, Jr., Bruce Cohen, Robert Ecker, Edward Esposito, attorney Elaine Weiss, attorney Stephen Tabano, formerly of The Florida Bar.

II. SPECIFIC FINDINGS OF FACT:

1. Mr. Seldin was suspended by order of this court dated May 12, 1988 in Case No. 69,956, a copy of which is appended to Mr. Seldin's Petition for Reinstatement as his Exhibit "A".

2. The above-referenced order required Mr. Seldin to make restitution to the Estate of Robert A. Stephenson in the amount of \$10,000, to attain a passing score on the ethics portion of the Bar exam and to pay the costs of that disciplinary proceeding.

3. This Referee finds that Mr. Seldin has strictly complied with the specific conditions of the prior disciplinary order.

4. Based on the testimony adduced before this Referee at the final hearing, this Referee specifically finds that Mr. Seldin has complied with the requirements of Florida law and demonstrated clear and convincing evidence of the following:

- a) Unimpeachable character and moral standing in the community;
- b) Clear evidence of a good reputation for professional ability;
- c) Evidence of lack of malice and ill-feeling by the Petitioner toward those who by duty were compelled to bring about the disciplinary proceeding;
- d) Personal assurances supported by corroborating evidence revealing a sense of repentance and remorse as well as a desire and intention of the Petitioner to conduct himself in an exemplary fashion in the future.

5. This Referee finds that inasmuch as the Supreme Court of Florida ordered that restitution be made to the Estate of Mr. Stephenson, that Mr. Seldin has fully and completely made such restitution in compliance with the order of the Supreme Court.

6. This Referee finds that Mr. Seldin is morally equipped to resume a position of honor and trust among the ethical petitioners at Bar.

7. This Referee further finds that it would be unnecessary for Mr. Seldin to retake any other portions of the Bar examination or otherwise prove his professional abilities.

8. This Referee finds that Mr. Seldin was not dilatory or uncoöperative in complying with requests of the Florida Bar in conjunction with his reinstatement and finds that his requests for motions for protection or in limine, although denied in part, were reasonable.

9. This Referee finds that by clear and convincing evidence, Mr. Seldin credibly and truthfully explained what he meant in his Petition for Reinstatement by stating that he had not felt morally guilty of the underlying charges. The Referee finds that these statements do not reflect a lack of remorse nor any failure to comply with the requisites for reinstatement. See The Florida Bar In Re: Vernell, 520 So.2d 564 (Fla.1988).

III. RECOMMENDATION AS TO REINSTATEMENT:

I find that the Petitioner, Keith A. Seldin, is entitled to immediate reinstatement to the practice of law and I reccomend his immediate reinstatement by the Supreme Court of Florida. The Florida Bar presented no evidence of its own in this matter but attempted to impeach Mr. Seldin by attacks on his statement in his

Petition for Reinstatement, and unsubstantiated charges questioning the propriety of Mr. Seldin's 1983 or 1984 tax return, and by efforts to impeach the witnesses which Mr. Seldin presented to this Court. In reaching this recommendation, this Referee finds that Mr. Seldin's statements in his Petition were neither misleading nor do they justify the denial of his reinstatement. The Referee further finds that the witnesses were credible, and that they support reinstatement, and in no way cloud or constitute evidence in opposition to his reinstatement. As to the tax matter, this Referee finds that there was absolutely no evidence shown to support whether or not the questioned income should have been declared in 1983 or 1984, and The Bar presented no evidence that the 1984 return did not include the income. The Bar did not call or produce any expert witnesses nor did it take the deposition or statement of Mr. Stephen Blinder, the C.P.A. who prepared all of the returns in question. Accordingly, this Referee finds that whether or not the 1983 tax return is ever produced, there is no evidence that the funds were to have been reported in 1983, as opposed to 1984. Although the Referee has allowed The Bar to request the 1983 tax return, since The Florida Bar did not adduce any evidence whatsoever to show that the funds should have been reported in 1983, it is the finding of this Court that the 1983 return, no matter what it shows, would not have an impact on this decision.

Counsel for The Florida Bar has alluded to Petitioner's failure to reveal in his application for reinstatement a pending civil litigation venued in the Palm Beach Circuit Court entitled Jupiter Cove Plaza, Ltd., etc. plaintiff against Keith Seldin, P.A. defendant, case number CL 89-998 AE, admitted into evidence as joint composite exhibit 1. Said lease commitment by Petitioner's P.A. originated prior to Petitioner's suspension to practice law and was an arguable debate in semantics between counsel wherein whatever the lease contract dispute results may be, would have no impact on this Referee's decision.

IV. RECOMMENDATION AS TO PENDING MOTION FOR SANCTIONS:

The Petitioner, at the time of trial, agreed to waive any requests for affirmative sanctions against The Florida Bar for failure to comply with timely discovery. This Referee finds that The Bar did not timely comply with discovery which was due to an inadvertent oversight.

V. STATEMENT OF COSTS AND RECOMMENDATION AS TO THE MANNER IN WHICH COSTS SHOULD BE TAXED:

I find that the following costs were reasonably incurred by The Florida Bar and should be assessed against the Petitioner, payable within thirty (30) days after the Supreme Court's acceptance of this report:

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| Investigator costs | \$ 613.10 |
| Publication costs | 38.30 |
| Keith Seldin deposition | 135.75 |
| Betty Seldin deposition | 89.00 |
| Pretrial hearing transcript | 151.75 |
| IRS fee | 4.25 |
| Final hearing transcript | <u>376.75</u> |
| TOTAL | 1,408.90 |
| Credit for costs deposit | 500.00 |
| BALANCE DUE | \$ 908.90 |

RENDERED this 16 day of October, 1990 at Fort Lauderdale, FL


W. CLAYTON JOHNSON

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing referee's report was furnished to Nicholas R Friedman, attorney for petitioner, 100 North Biscayne Boulevard, Miami, FL 33132 and to David M Barnovitz, Florida Bar counsel, 5900 North Andrews Avenue, Ft Lauderdale, FL 33309 by regular mail on October 16, 1990.


W. CLAYTON JOHNSON