

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Case No: SC02-1991

Complainant,

TFB Case Nos. 1998-50,098(17D)
2000-51,788(17D)

v.

DAVID JAMES STERN,

Respondent.

_____ /

CONSENT JUDGMENT

The respondent, David James Stern, hereby tenders this Consent Judgment pursuant to Rule 3-7.9(b), Rules Regulating The Florida Bar, and says:

1. Conditional Nature.

The respondent acknowledges that this consent judgment ultimately must be approved by The Florida Bar Board of Governors pursuant to Rule 3-7.9(e) and by the referee and the Supreme Court of Florida pursuant to Rules 3-7.9(b) and 3-7.9(c) . Respondent states that he is entering into this consent judgment freely and voluntarily after having had the advice of counsel of his own choosing.

Respondent further states that it is his understanding that if this consent judgment is not accepted by any of the above, none of the statements made during settlement negotiation or in this document may be used in subsequent proceedings against

him.

PUBLIC RECORD

2. Factual Basis.

The respondent hereby agrees to the following facts as a procedural basis for this consent judgment.

- A. The respondent was admitted to the Florida Bar in 1991. The respondent's professional association, of which he has always been the sole shareholder, is known as The Law Offices of David J. Stern, P.A. The professional association was created in or about 1993.
- B. Respondent's law firm represents banks and other lending institutions in mortgage foreclosures.
- C. As part of the foreclosure process, it is necessary to determine the identity of parties who may claim some interest in the real property being foreclosed. This is typically done through a title search.
- D. Respondent owned Professional Title and Abstract Company of Florida, Inc. ("Professional Title"). Professional Title has, since 1995, been a duly licensed title company with the Florida Department of Insurance. Prior to 1999, however, respondent did not operate Professional Title as an entity separate from his law firm, but instead used personnel employed and paid by The Law Offices of David J. Stern, P.A. to do the abstracting work for the foreclosures handled by his law firm.

E. As industry standard, lenders use loans documents that provide for payment of their attorneys' fees and costs incurred in foreclosure proceedings. Respondent was required to file affidavits of fees and costs in order to receive an award of fees and costs in foreclosure proceedings. Up to 1999, Respondent's firm routinely filed sworn affidavits stating that costs in the amount of \$325.00 had been paid for abstracting services. In fact, respondent's firm had not paid costs to a separate entity, because all work was performed by staff employed by respondent's law firm.

F. Beginning in August 1999, respondent began using Professional Title to perform these abstracting services. Though this company is located on respondent's firm's premises, it is a separate legal entity. Since August 1999, it has been operated as a separate legal entity, adhering to all requisite legal and accounting formalities. Its employees are paid separately through a Professional Title bank account, and respondent's firm, through its operating account, pays Professional Title for services performed.

G. The affidavits filed by respondent's firm up to August 1999 were not technically accurate. Although the total amount of fees and costs charged by respondent was not excessive, the affidavits do not reflect that the "abstracting costs" had not been paid to a third party but that those services had been

performed by respondent's law firm's in house personnel. Accordingly, the affidavits were potentially misleading to a party or court who wished to make inquiry into the costs sought by respondent's firm.

3. Rules Violated.

For the purposes of the consent judgment, respondent admits that his affidavits regarding abstract costs prior to August, 1999 were in violation of Rule 4-8.4(d) of the Rule Regulating The Florida Bar (a lawyer shall not engage in conduct prejudicial to the administration of justice), as set forth in Count I of the Complaint. With regard to Counts II, III and IV of the Complaint, Respondent denies the material allegations and generally denies that his conduct as set forth in those counts violates the Rules Regulating The Florida Bar.

4. Florida Standards, Aggravating and Mitigating Factors.

It is the position of Complainant, The Florida Bar, that Standard 6.12 of the Florida Standards for Imposing Lawyer Sanctions could apply to his situation, and that suspension could be an appropriate sanction, but for the fact that respondent took remedial measures to correct the procedures that gave rise to this action. Complainant and Respondent agree, therefore, that Standard 6.13 applies, and that public reprimand is the appropriate sanction -- "Public reprimand is appropriate when a lawyer is negligent either in determining whether statements or documents

are false or in taking action when material information is being withheld.”

The parties agree that the following aggravating factors apply to this matter: 9.22(c) [a pattern of misconduct]; 9.22(d) [multiple offenses, through a single practice repeated in multiple cases]. The parties further agree that the following mitigating factors apply to this matter: 9.32(a) [absence of a prior disciplinary record]; 9.32(e) [full and free disclosure to disciplinary board and cooperative attitude toward proceedings].

5. Discipline.

The respondent agrees to discipline consisting of a public reprimand, to be administered before The Florida Bar Board of Governors.

6. Additional Conditions.

During the period of one year from the date of entry of the court order approving the Report of Referee in this matter the respondent agrees to submit to two on-site inspections of his law firm by bar counsel, during which bar counsel shall be allowed to speak with randomly selected staff of respondent and review randomly selected files, documents and records. The respondent may have independent counsel present at any such inspection and present during any communications between bar counsel and respondent's staff. Respondent acknowledges that discovery during these inspections of any conduct that

potentially violates the Rules Regulating The Florida Bar will result in the opening of a Florida Bar investigatory file and appropriate investigation. The respondent shall have no costs associated with these inspections and there shall be no monitoring fees associated with the disciplinary matters that are the subject of this plea charged to respondent during the year.

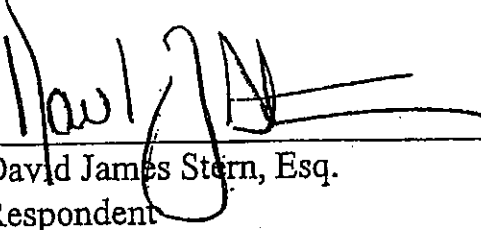
Respondent further agrees that during the one year following entry of the court's order, if probable cause is found as to any Florida Bar complaint arising out of activity that took place during the one year inspection period herein, respondent will immediately provide notice of the grievance to the client he was representing during the conduct in question, and provide The Florida Bar with a copy of this notice and a written acknowledgment from the client that it was notified of the grievance.

Respondent further agrees that if probable cause is found as to any new bar complaint arising out of activity that took place during the one year inspection period, The Florida Bar may reopen any matter closed pursuant to the resolution underlying this consent judgment. If The Florida Bar reopens any matter due to a finding of probable cause, the respondent acknowledges that he cannot raise res judicata, estoppel, laches, double jeopardy, or prior dismissal of any allegations as a defense. Respondent may assert any other defenses to any such proceeding.

7. Costs.

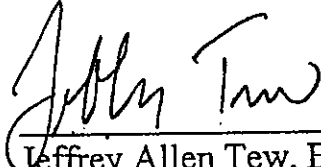
Respondent agrees to pay The Florida Bar's costs incurred in this matter in the total amount of \$750.00.

Dated this 1st day of October, 2002.



David James Stern, Esq.
Respondent
801 S. University Drive, Suite 500
Plantation, FL 33324
Phone (954) 233-8000
Fla. Bar No. 911054

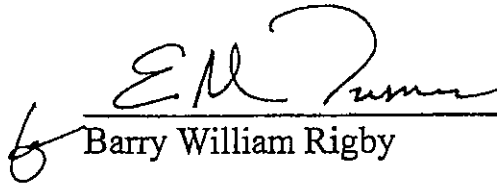
Dated this 3rd day of October, 2002.



Jeffrey Allen Tew, Esq.
Counsel for Respondent
201 S. Biscayne Blvd.
Miami, FL 33131
Phone (305) 536-8452
Fla. Bar No. 121291

Certificate of Service

I hereby certify that the original of the foregoing was furnished to The Honorable Elizabeth Maass, Referee, by Hand Delivery, and a true and correct copy have been furnished to John Anthony Boggs, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300 by Hand Delivery, and to Jeffrey Allen Tew, Esq., Counsel for Respondent, 201 S. Biscayne Blvd., Miami, FL 33131 by facsimile and U.S. Mail, this 9th day of October, 2002.


Barry William Rigby

10/11/00

**IN THE SUPREME COURT OF FLORIDA
(Before a Referee)**

THE FLORIDA BAR,

Case No: SC02-1991

Complainant,

**TFB Case Nos. 1998-50,098(17D)
2000-51,788(17D)**

v.

DAVID JAMES STERN,

Respondent.

_____ /

**UNCONTESTED REPORT OF REFEREE
ACCEPTING CONSENT JUDGMENT**

I. Summary of Proceedings: The undersigned was appointed as referee to conduct disciplinary proceedings herein according to the Rules Regulating The Florida Bar. This matter was resolved through a Consent Judgment. The record in this case, which is forwarded to The Supreme Court of Florida, consists of the following: Complaint; Answer; Joint Notice of Voluntary Dismissal of Counts II, III and IV; Consent Judgment; and this Uncontested Report of Referee Accepting Consent Judgment.

The following attorneys appeared as counsel for the parties:

For The Florida Bar - Barry William Rigby and Eric Montel Turner

For The Respondent - Jeffrey Allen Tew

II. Findings of Fact as to Each Item of Misconduct of which the Respondent Is Charged: After considering all the pleadings and evidence before me, pertinent portions of which are commented on below, I find pursuant to the Consent Judgment that the facts of the Consent Judgment are admitted. The Consent Judgment and the Complaint are attached hereto and incorporated herein.

III. Recommendations as to Whether the Respondent Should Be Found Guilty: As

to each count of the complaint I make the following recommendations as to guilt or innocence:

Pursuant to the Consent Judgment, I find the respondent guilty of violating Rule 4-8.4(d), Rules Regulating The Florida Bar, as admitted in the Consent Judgment. I accept the Joint Notice of Voluntary Dismissal of Counts II, III and IV of the Complaint.

IV. Recommendation as to Disciplinary Measures to Be Applied:

Pursuant to the Conditional Guilty Plea for Consent Judgment, I make the following recommendations as to the disciplinary measures to be applied:

A. Public reprimand to be administered before The Florida Bar Board of Governors.

B. Additional Conditions as follows.

During the period of one year from the date of entry of the court order approving the Report of Referee in this matter the respondent shall submit to two on-site inspections of his law firm by bar counsel, during which bar counsel shall be allowed to speak with randomly selected staff of respondent and review randomly selected files, documents and records. The respondent may have independent counsel present at any such inspection and present during any communications between bar counsel and respondent's staff. The discovery during these inspections of any conduct that potentially violates the Rules Regulating The Florida Bar will, in the discretion of The Florida Bar, result in the opening of a Florida Bar investigatory file and appropriate investigation. The respondent shall have no costs associated with these inspections and there shall be no monitoring fees associated with the disciplinary matters that are the subject of this plea charged to respondent during the year.

During the one year following entry of the court's order, if probable cause is found as to any new Florida Bar complaint arising out of activity that took place during the one year inspection period provided herein, respondent will ~~immediately provide notice of the grievance to the client he was representing~~

during the conduct in question, and provide The Florida Bar with a copy of this notice and a written acknowledgment from the client that it was notified of the grievance.

If probable cause is found as to any new bar complaint arising out of activity that took place during the one year inspection period, The Florida Bar may reopen any matter closed pursuant to the resolution underlying the consent judgment. If The Florida Bar reopens any matter due to a finding of probable cause, the respondent may not raise res judicata, estoppel, laches, double jeopardy, or prior dismissal of any allegations as a defense. Respondent may assert any other defenses to any such proceeding.

- V. Personal History and Past Disciplinary Record: After the finding of guilty and prior to recommending discipline to be recommended pursuant to R. Regulating Fla. Bar 3-7.6(k)(1), I considered the following personal history and prior disciplinary record of the respondent, to wit:

Age: 42

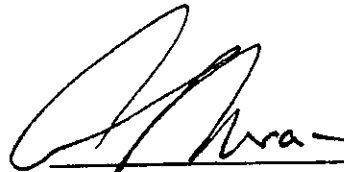
Date admitted to Bar: November 27, 1991

Prior disciplinary convictions: None

- VI. Statement of costs and manner in which costs should be taxed: I find the following costs were reasonably incurred by The Florida Bar.

Administrative Costs	\$750.00
Court Reporter	249.00
TOTAL COSTS:	\$999.00

Dated this 11 day of October, 2002.



Elizabeth Maass
Referee

10/21/02

Supreme Court of Florida

THURSDAY, OCTOBER 24, 2002

CASE NO.: SC02-1991

Lower Tribunal Nos.: 1998-50,098(17D),
2000-51,788(17D)

THE FLORIDA BAR

vs. DAVID JAMES STERN

Complainant(s)

Respondent(s)

The Court approves the uncontested referee's report and directs that respondent be reprimanded by the Board of Governors of The Florida Bar in a personal appearance before the board.

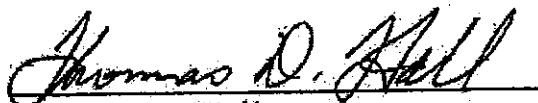
Respondent is further directed to comply with all other terms and conditions set forth in the report.

Judgment is entered for The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399, for recovery of costs from David James Stern in the amount of \$999.00, for which sum let execution issue.

Not final until time expires to file motion for rehearing and, if filed, determined.

A True Copy

Test:



Thomas D. Hall
Clerk, Supreme Court



kb

Served:

ANDREW J. KOHAN
DAVID D. WELCH
JOHN ANTHONY BOGGS
BARRY W. RIGBY
JEFFREY ALLEN TEW
HON. ELIZABETH T. MAASS, JUDGE

PUBLIC
RECORD



MM 10/29/02

DFM

10/28/02
DFM

IN THE SUPREME COURT OF FLORIDA
(Before the Board of Governors of The Florida Bar)

THE FLORIDA BAR,

Case No: SC02-1991

Complainant,

TFB Case Nos. 1998-50,098(17D)
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v.

DAVID JAMES STERN,

Respondent.

PUBLIC REPRIMAND

Please state your full name and the place where you practice law.

Mr. Stern, you are here today to receive a **public reprimand** before the assembled members of the Board of Governors of The Florida Bar.

By order dated October 24, 2002 the Supreme Court of Florida found that you engaged in professional misconduct by the following:


Your firm represents lenders in foreclosure proceedings. In most situations the defendants are unable to afford competent legal counsel to raise any defenses to the foreclosure proceedings. In the interest of expediency and to maximize your own profits, you provided title insurance services in house, and represented in affidavits filed in multiple courts throughout the state that these services were out of pocket costs, when in fact the services were being provided by personnel paid by your law firm. Your manner of operation and these affidavits were misleading to the defendants and the courts and constituted conduct prejudicial to the administration of justice.

Mr. Stern, your actions and unethical behavior constitute violations of the Rules Regulating The Florida Bar. Those rules include the Rules of Professional Conduct, and our code of ethics. The practice of law is a privilege and lawyers should never violate those laws that we have sworn to uphold. Your conduct clearly indicates your failure in this respect.

Lawyers are officers of the court and are sworn to uphold the integrity of the judicial system. When attorneys engage in misconduct it casts doubt over the fair and impartial administration of justice. By engaging in this misconduct you not only blemished your own reputation, but you have tainted the reputation of the profession as a whole. Actions such as yours reduce respect for the legal profession and diminish the effectiveness of our system of justice.

This **Public Reprimand** is now part of your permanent Florida Bar disciplinary record. You are further advised that while this **Public Reprimand** does not affect your privilege of practicing law, future misconduct will. The lawyers of Florida expect your future conduct be in compliance with your oath and you should demand the same of yourself.

Done and Administered this 25th day of October, 2002.



Tod Aronovitz
President
The Florida Bar