

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

KENNETH EDWARD WALTON II,

Respondent.

Supreme Court Case
No. SC-

The Florida Bar File Nos.

2019-70,668 (11P)

2020-70,037 (11P)

2020-70,203 (11P)

2020-70,204 (11P)

COMPLAINT

The Florida Bar, complainant, files this Complaint against Kenneth Edward Walton II, 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 29, 1999, and is subject to the jurisdiction of the Supreme Court of Florida.
2. Respondent practiced law in Miami-Dade County, Florida, at all times material to this complaint.
3. The Eleventh Judicial Circuit Grievance Committee P 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.

COUNT I

THE FLORIDA BAR FILE NO. 2019-70, 668

4. Salenna Burgess originally retained respondent for a file review related to a bankruptcy matter. Respondent completed the file review promptly and well by all accounts.

5. In or around April 2018, Ms. Burgess decided to retain respondent to handle her bankruptcy matter, following a bad experience with her prior attorney and based on recommendations respondent made during the file review.

6. Ms. Burgess paid respondent \$6,000.00 for the representation.

7. Although communication was good at the outset of the representation, respondent became more difficult to reach as time went by.

8. On June 7, 2018, respondent forwarded correspondence dealing with Ms. Burgess' matter to the client.

9. Roughly three months later, Ms. Burgess emailed respondent on September 5, 2018, requesting an update on the status of her case.

10. When she did not hear from respondent for about ten days, Ms. Burgess followed up with him on September 13, 2018.

11. Respondent replied that same day and represented to Ms. Burgess that he would work on her case over the weekend. Notably, at that

time, respondent apologized to Ms. Burgess for not being more prompt in his reply “or communicating better.” He stated in his email to her that his lack of communication was “unacceptable, inexcusable, and embarrassing.”

12. Afterward, respondent ceased communication with Ms. Burgess, even though Ms. Burgess emailed him on October 2, 2018; October 5, 2018; October 9, 2018; and October 22, 2018.

13. Months later, respondent finally replied to Ms. Burgess on December 21, 2018. Respondent wanted to discuss with his client what he characterized as “everything that has and hasn’t happened” in her case.

14. Following that email, Ms. Burgess and respondent spoke about her case. According to her bar grievance, Ms. Burgess said respondent apologized to her for what respondent described as his own unacceptable behavior.

15. Ms. Burgess communicated with respondent once more in January 2019. However, at the end of the month, when Ms. Burgess resumed requesting updates on her case, communication ceased until March 12, 2019.

16. In the March 12, 2019, email, respondent forwarded an email to Ms. Burgess regarding her bankruptcy case and stated he was on his way to court. He promised to download and email the docket to her that day.

17. When Ms. Burgess filed her grievance with the bar on May 7, 2019, she had still not heard from respondent regarding her case.

18. On January 15, 2020, respondent provided a statement to the bar where he admitted he “initially did a poor job of helping her understand that the work was completed and explaining the meaning of the all of the final documents we received back from the bankruptcy court.”

19. Additionally, respondent stated Ms. Burgess “successfully completed her 60 months in Chapter 13, however she could not enjoy it as soon as it happened because of my poor communication.”

20. Significantly, in that same January 15, 2020, communication to the bar, respondent stated he was medically incapacitated for the majority of his representation of Ms. Burgess. He stated to the bar, “[t]o this day, I am still under doctor’s care for one of the conditions that seriously affected how I represented Ms. Burgess and will be treating for the rest of my life it appears. Although, I am lightyears ahead of where I was most of the past two years, I am still improving as each week passes.”

21. By reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: 4-1.3 (Diligence); (4-1.4 Communication); and 4-1.16(a) (When Lawyer Must Decline or Terminate Representation).

COUNT II

THE FLORIDA BAR FILE NO. 2020-70,037

22. Respondent was hired as the closing agent by the buyer for the preparation of documents related to a real estate transaction for 429 NW 43rd Street in Miami, Florida.

23. Sandor Urban was the realtor on behalf of the seller in this transaction.

24. Mr. Urban and his client were notified of the closing date, time and location. They went to respondent's office at the agreed-upon time on or around October 18, 2019, at 4:00 p.m.

25. Respondent's staff was unaware of the appointment. Nonetheless, Mr. Urban and his client waited until 5:30 p.m., at which point office staff asked them to leave since the office was closing.

26. Respondent's paralegal told them to wait in the lobby. Mr. Urban and his clients waited until 7:00 p.m., at which point the sellers decided to leave.

27. Respondent never made it to the agreed-upon appointment for the scheduled closing.

28. Shortly thereafter, Mr. Urban and the sellers were able to speak to respondent, who agreed to send the seller the documents to be signed and notarized. The seller printed and executed the documents.

29. As the closing agent, respondent was responsible for making sure all the funds were disbursed to finalize the transaction. Respondent was also responsible for sending Mr. Urban his commission as part of his duties as closing agent, as well as creating a closing statement, which turned out to be rife with errors.

30. Respondent completed the closing on October 18, 2018.

31. On October 22, 2018, respondent sent what appeared to be Mr. Urban's commission to him only to stop payment on the check minutes after Mr. Urban's office received it.

32. Shortly after the closing, it was discovered that the closing statement had errors. Respondent overpaid the seller by approximately \$6,586.00, the approximate amount due Sandor Urban. Respondent produced the final corrected closing statement in May 2020, approximately 18 months later.

33. Between April 14, 2020, and August 17, 2020, Mr. Urban sent no fewer than 14 requests for an update on the status of his payment for commission. Several of these emails also requested updates about the status of respondent's corrections to the seller's closing statement.

34. Respondent sporadically replied to Mr. Urban's desperate requests eight times. Notably, respondent rarely gave updates other than to excuse himself by saying he was in the process of completing some task.

35. Respondent used the back and forth of the emails between himself and Mr. Urban to delay and string Mr. Urban along while he waited for payment for work, which had been completed, he was entitled to, and that respondent was obligated to provide.

36. Respondent never provided the payment to Mr. Urban.

37. Instead, Mr. Urban, through his office, requested his commission directly from the seller when Mr. Urban failed to keep his promises.

38. Ultimately, Mr. Urban received his commission from the seller after he sent his own demand letter.

39. Additionally, respondent failed to maintain technical trust accounting records. The bar served a subpoena upon respondent requesting the following documents covering the period of time between

January 1, 2018, to February 29, 2020: copies of bank statements for two Bank of America bank accounts; copies of trust accounting records required by Rule 5-1.2 of the Rules Regulating The Florida Bar; copies of HUD-1 statements and balance sheets for all real estate transactions; and a complete copy of respondent's closing file for the purchase/sale of the property that is the subject of this complaint.

40. Respondent's response to the bar's subpoena was deficient. He did not provide trust account bank statements and cancelled checks for January 1, 2018 through February 29, 2020; any client ledger cards, any cash receipts and disbursement journals; any trust account bank reconciliations; and any reconciliations of the trust account bank balances to the individual client ledger card balances.

41. Respondent is required on a monthly basis to maintain the records outlined in paragraph 36 of this complaint, and he failed to do so.

42. By reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: 4-4.4(a) (In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third or knowingly use methods of obtaining evidence that violate the legal rights of such a person); and 5-1.2 (Failure to maintain technical trust accounting records).

COUNT III

THE FLORIDA BAR FILE NO. 2020-70,203

43. Dmitri Mikhailov and Maritza Lagos retained respondent in or about August 2018 to remove a lien over a Sunny Isles Beach, Florida, property for which they were being charged a daily \$500.00 fine.

44. Respondent charged a \$5,000.00 fee but failed to perform the agreed-upon services.

45. Ultimately, Mr. Mikhailov ended up owing the City of Sunny Isles Beach \$700,000.00 in daily fines because of respondent's failure to pursue the matter at all, let alone in a timely matter.

46. Between October 15, 2018, and July 1, 2019, Mr. Mikhailov initiated correspondence requesting status updates with respondent no fewer than 15 times only to encounter silence on respondent's end.

47. The 15th email from Mr. Mikhailov on July 1, 2019, stated that he would initiate a complaint with The Florida Bar due to respondent's failure to communicate with him throughout the case.

48. The next day, on July 2, 2019, respondent replied to Mr. Mikhailov. In that email, respondent apologized to Mr. Mikhailov.

49. Incredibly, after apologizing, respondent inappropriately thanks his client "for your email versus responding in a different manner, such as

waiting in the shadows near my house or office with a baseball bat and then using it.”

50. After the July 2, 2019, correspondence, respondent was asked to draft and mail a proposal to Mr. Mikhailov indicating how he plans to resolve the matter he was retained for. Additionally, Mr. Mikhailov requested that respondent forward all communications between Sunny Isles Beach and respondent.

51. Respondent was given a deadline of July 8, 2019, to provide this information. He never responded to Mr. Mikhailov’s request.

52. Shortly thereafter, Mr. Mikhailov requested updates on his case no fewer than seven more times between July 11, 2019, and September 23, 2019, with no response from respondent, save for one letter respondent sent to Mr. Mikhailov on or around August 9, 2019, related to a conversation between respondent and another party in the matter.

53. After August 2019, respondent did not speak to Mr. Mikhailov again.

54. In a January 15, 2020, letter to the bar, respondent stated that he “[agreed] with Mr. Mikhailov that he should receive a refund of the money tendered to me.”

55. Respondent in that letter to the bar also stated he suffered from “multiple medical conditions that rendered me unable to fully complete services and to stay in close communication with Mr. Mikhailov.”

56. However, respondent neither communicated any limitation to rendering services to his client nor withdrew from the representation.

57. By reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: 4-1.3 (Diligence); 4-1.4 (Communication); 4-1.5 (Fees and Costs for Legal Services); and 4-1.16(a) (When Lawyer Must Decline or Terminate Representation).

COUNT IV

THE FLORIDA BAR FILE NO. 2020-70,204

58. Roy Collins retained respondent in or about June 2019 to represent him in a foreclosure defense case and to provide him with potential bankruptcy assistance.

59. Mr. Collins paid respondent a \$5,000.00 retainer fee on June 18, 2019. Mr. Collins did not hear from respondent again until late August 2019.

60. Between August 10, 2019, and August 17, 2019, Mr. Collins attempted communication with respondent by calling his office and mobile

phone, sending emails and text messages, and leaving several messages every day during that time period.

61. On August 16, 2019, Mr. Collins emailed respondent and terminated their relationship. He requested a refund in that email.

62. On August 21, 2019, respondent sent Mr. Collins a text message apologizing to him for being “out of pocket,” explaining that he had been “recovering from an injury.” He asked if he could call Mr. Collins around 8:00 p.m. that evening.

63. However, respondent did not call. Instead, respondent sent a text message to Mr. Collins at 10:39 p.m. with a promise to call the next day.

64. That was the last time Mr. Collins ever heard from respondent.

65. In a letter to the bar, dated February 27, 2020, respondent admits he did not communicate with Mr. Collins as he should have.

66. In that letter, respondent also admitted he was not healthy enough to represent Mr. Collins, stating that he “probably should not have accepted Mr. Collis [sic] case at that time [sic] I see that I was overly optimistic that I would soon make a full recovery.”

67. By reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: 4-1.4 (Communication); 4-1.5

(Fees and Costs for Legal Services); and 4-1.16(a) (When Lawyer Must Decline or Terminate Representation).

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 Kenneth Edward Walton II, at kenneth@waltonlawfirm.com; and that a copy has been furnished by United States Mail via certified mail No. 7017 1450 0000 7821 0285, return receipt requested to Kenneth Edward Walton II, whose record bar address is Bank of America Financial Center, 701 Brickell Avenue, Suite 1550, Miami, FL 33131-2824 and via email to Rita Elizabeth Florez, Bar Counsel, rflorez@floridabar.org, on this 16th day of February, 2021.



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 Rita Elizabeth Florez, Bar Counsel, whose address, telephone number and primary email address are The Florida Bar, Miami Branch Office, 444 Brickell Avenue Rivergate Plaza, Suite M-100Miami, Florida 33131-2404, (305) 377-4445 and rflorez@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.