

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

MICHAEL J. FREEMAN,

Respondent.

Supreme Court Case
No. SC-

The Florida Bar File
No. 2017-70,224 (11C)

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COMPLAINT

The Florida Bar, Complainant, files this Complaint against Michael J. Freeman, 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, 1973, and is subject to the jurisdiction of the Supreme Court of Florida.

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

3. 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.

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4. This disciplinary action stems from post dissolution proceedings between Todd Kozel and Ashley Kozel. As part of a property settlement in that action, the former husband, Todd Kozel, was required to perform various obligations, including the transfer of certain assets to his former wife, Ashley Kozel, from an Isle of Jersey offshore trust (known as the Gokana Trust). His failure to comply with those obligations led to post dissolution enforcement proceedings and a \$34 million judgment in Ashley Kozel's favor in July 2015.

5. Finding that Todd Kozel had sought to evade the jurisdiction of the court, the presiding judge signed a comprehensive asset injunction order on September 11, 2015. The order prohibited Kozel and his agents, employees and attorneys from transferring or otherwise disposing of any assets in which he or the Gokana Trust maintained an interest, directly or indirectly. This specifically included a New York condominium, which had been purchased by the trust through an LLC: 212 West 18 LLC ("212 West").

6. Beginning in October 2013, respondent served as the manager for 212 West. Although respondent appeared to resign from this position on September 10, 2015, one day prior to the asset injunction taking effect, such resignation was on paper only, as respondent continued to act on behalf of 212 West throughout the relevant time period.

7. Despite knowledge of the asset injunction, respondent, along with others, perpetrated a fraud on the court and deliberately violated the court ordered injunction through their active participation in creating and using backdated and falsified documents to facilitate the purported sale of the membership shares of 212 West.

8. In subsequent court orders, respondent's conduct was explicitly found to constitute a fraud on the court. Examples and details of respondent's misconduct include the following:

9. Respondent became involved in this scheme via his long time association with Markus Hugelshofer ("Hugelshofer"). Hugelshofer is a Swiss-based attorney who helped Todd Kozel create the Gokana Trust and, through his law firm, served as trustee.

10. Hugelshofer, with whom respondent shared a 30-year professional relationship, hired respondent and his Coral Gables law office to serve as the manager of 212 West in October 2013. Hugelshofer was respondent's principal point of contact in connection with his role as manager of 212 West 18 LLC.

11. 212 West was a limited liability company created by the Gokana Trust. Its purpose was to hold ownership of a condominium in New York City located in the Walker Tower at 212 West 18th Street. This condominium was explicitly referenced in the asset injunction issued by the post-judgment

enforcement court. At various times, Todd Kozel and Inga Kozel were also listed as owners of this condominium. In addition, it was generally understood that Todd and Inga Kozel were to reside in the condominium.

12. In September 2014, Todd and Inga Kozel began occupying the residence, after making various improvements to the unit.

13. Beginning in August 2014 and continuing through at least February 2015, multiple email conversations took place between respondent, Inga Kozel, Hugelshofer, and New York attorneys discussing the potential terms of a “rental agreement.” At various times, it was proposed that the Kozels pay between \$35,000 and \$50,000 per month as rent. Despite sending a lease to Inga Kozel in February 2015, at no point during respondent’s “official” term as manager of 212 West was there ever a signed lease on file.¹

14. Moreover, during post dissolution proceedings, respondent testified that he was unaware of 212 West ever receiving any rental income from the Kozels and acknowledged he never applied for condominium board approval for the Kozels to move in as tenants.

15. On July 23, 2015, the presiding judge in the dissolution action entered a supplemental final judgment finding that Todd Kozel had failed to transfer 23

¹ As will be discussed in more detail below, respondent “resigned” from his position as manager on 212 West on September 10, 2015. However, he continued to act on behalf of 212 West after that date.

million shares from Keystone, one of his companies, to Ashely Kozel as required under the 2012 property settlement agreement. The court opined that the late delivery was tied to unprecedented trading activity in Keystone which coincided with a rumor that a large U.S. oil company was going to take over or merge with Keystone. Because Ashley Kozel had made it well known that she wished immediately to sell her shares in the hot market, and because Todd Kozel was able to transfer the full 23 million shares timely – but intentionally did not – the court found she suffered substantial economic harm. After calculating the damages, the court awarded Ashley Kozel \$34,611,702. An amended order and judgment entered on September 15, 2015 confirmed these findings.

16. On September 8, 2015, Ashley Kozel filed a motion to reinstate a previous asset injunction citing Todd Kozel’s history of making transfers to asset protection trusts to defeat the court’s jurisdiction. The motion was scheduled for hearing on September 11, 2015.

17. On September 9, 2015, Todd Kozel text messaged and called respondent advising him that there was an upcoming hearing in the dissolution action. According to respondent, Kozel did not provide any details of the nature of the hearing, and the conversation ended after respondent recommended Kozel retain a particular attorney.

18. On September 10, 2015, Hugelshofer sent an email to respondent asking him to “[p]lease call me urgently, a [sic] early as possible. Preferably my mobile ... (I am now for a few hours in the office, then to Lomdom [sic] and tomorrow Paris). We have to do the NY deal now!”

19. The “NY deal” referred to the potential sale of the New York condominium to a buyer in Cyprus. Preliminary negotiations had begun in August 2015, prior to Ashely Kozel seeking the renewed asset injunction, but after the court had awarded her a \$34 million judgment.

20. Notwithstanding the July 23, 2015 judgment and Ashely Kozel’s request for an asset injunction, when respondent spoke with Hugelshofer the morning of September 10, 2015 he was informed that the condominium – or rather, the membership shares of 212 West – had been sold based upon a verbal agreement. Everything that occurred from this point constituted Hugelshofer’s and respondent’s attempts to document that the purported sale had taken place on September 10, 2015.

21. Later that morning, Andrea Bendiner, an associate in Hugelshofer’s office, emailed respondent asking him to resign as manager of 212 West. The email also asked respondent to call “to discuss again the sale of the apartment or LLC.” A subsequent email asked respondent to “get a document or confirmation

by a notary” of his resignation as manager “in case we have to prove the correct date.”

22. Shortly thereafter, respondent sent an email to the attorney he had recommended to Todd Kozel and attached a copy of the July 23, 2015 judgment.

23. Later that afternoon, respondent sent an email to Hugleshofer attaching his resignation as manager of 212 West.

24. Notwithstanding this resignation, respondent continued to act on behalf of 212 West.

25. On September 11, 2015, the presiding judge in the dissolution action signed the asset and injunction order which cited Todd Kozel’s repeated attempts to undermine the jurisdiction of the court and enjoined him from “selling, transferring, alienating, pledging, forfeiting, hypothecating, encumbering, mortgaging, dissipating, spending and/or purchasing, and/or concealing, and/or otherwise alienating” any assets. The order explicitly identified the New York condominium as a subject asset and granted the injunctive relief against Kozel individually and “his agents, servants, employees and attorneys,” including Hugelshofer.

26. On September 14, 2015, Hugelshofer faxed a copy of the asset and injunction order to respondent.

27. On September 15, 2015, Hugelshofer sent respondent an email providing the name of the buyer, Capella Investments, Ltd, and stating the seller would be the Gokana Trust “or correctly: ‘Emeralp Trust Limited as Trustee for the Gokana Trust.’”

28. Later that morning, respondent sent an email to Hugelshofer attaching a standard form contract for the sale of a condominium and two sample promissory notes. Shortly thereafter, Bendiner replied “the LLC was sold on Thursday. Do you have a sample for the sale of the LLC ‘shares’ or shall we draft something?” respondent then forwarded a sample membership interest purchase agreement.

29. On September 23, 2015, a promissory note and membership interest purchase agreement, each containing an “effective” date of September 10, 2015, were faxed to the purported buyer’s attorney. Despite the attorney’s request that the documents be scanned and emailed, respondent informed him that “for an undisclosed reason they want to initiate as fax to you.” “They” was Hugelshofer.

30. Notwithstanding the purported “effective” date of September 10, 2015, none of the documents were signed until after September 11, 2015, the day the asset injunction order was signed.

31. The \$14.5 million promissory note obligated Capella to begin installments payments for accrued interest on October 31, 2015, with a balloon

principal payment due in September 2017. The membership purchase agreement called for a \$3 million payment at closing.

32. On October 21, 2015, respondent received a call from Hugelshofer requesting a copy of the lease agreement between Inga Kozel and 212 West. However, as described above, although a lease had previously been prepared, none had ever been executed.

33. On October 26, 2015, respondent sent correspondence to Hugelshofer attaching an “original signed lease” for the condominium. Respondent signed the lease, as well as an addendum, but did not date it. The lease did not contain the signature of either Inga or Todd Kozel.

34. Since the fall of 2015 and continuing to the present date, Ashley Kozel has sought to enforce the July 23, 2015 judgment against Todd Kozel and his related entities, including the Gokana Trust and 212 West.

35. In December of 2015, respondent was subpoenaed to testify at a deposition in the dissolution action. At that time, he was confronted with a version of the lease and addendum for the New York condominium reflecting that Inga Kozel had signed and dated it on September 2, 2014. This version of the lease, which made it appear that Todd and Inga Kozel were *bona fide* tenants of the New York condominium, was created using the documents respondent had sent to Hugelshofer on September 26, 2015.

36. On September 15, 2016, the presiding judge in the dissolution action issued multiple orders addressing the actions of Todd and Inga Kozel, Hugelshofer, and respondent concerning the purported sale of the New York condominium. In summary, the court found that 212 West, aided by respondent and Hugelshofer and for the benefit of Todd Kozel, committed a fraud on the court and “violated the most basic standards of integrity of litigants by knowingly falsifying records for production in discovery, by offering false testimony regarding those documents and other material issues, and by deliberately undermining the court’s September 11, 2015 asset injunction while on notice thereof.” (Order on Former Wife’s Motion to Enter Contempt and Discovery Sanctions Against 212 West LLC as a Result of a Fraud on the Court at 2).

37. The pertinent findings from the various orders are as follows:

“With respect to the purported “sale” of 212 to Capella, the evidence established, *inter alia*, that Mr. Freeman was contacted by the former husband shortly before the injunction hearing, that Mr. Freeman was advised of the pending hearing, and that Mr. Freeman assisted the former husband find a lawyer for the injunction hearing. Then, working with Markus Hugelshofer and other agents of the Gokana Trust, Mr. Freeman created a document that made it appear that he resigned as “manager” of 212 on September 10, 2015, which was part of the effort to create a file of fraudulent documents on the 212 issues. In reality, Freeman continued to act of behalf of 212 following his “resignation.” Indeed, after the entry of the injunction and after he “resigned,” Mr. Freeman assisted with the preparation of the falsified “sales” and “lease” documents for 212, he held meetings and communicated with third parties about 212, and he actively worked with Markus Hogelshofer to complete the falsified file of documents in anticipation of discovery in this action.”

(Order on 212 West LLC's Motions to Dismiss for Lack of Subject Matter and Personal Jurisdiction at 8.)

Mr. Freeman was also trusted with tasks related to the formation and operation of shell companies designed to hide the former husband's true ownership of the real estate, and he was likewise trusted to be part of the conspiracy to offer false testimony to the court and to the former wife's counsel about all these facts.

(Id. at 5).

The credible evidence and reasonable inferences derived therefrom established that 212, acting in concert with the former husband, Inga Kozel, Markus Hogelshofer, and Michael Freeman, manufactured falsified and backdated documents for production in the collection/enforcement case to make it appear the membership interests in 212 had been sold the day before the entry of the court's asset injunction when, in reality, the purported sale was a sham. The documents were then produced in discovery by Mr. Freeman as legitimate documents pursuant to a subpoena directed to him in numerous capacities. This was a fraud and a contempt of court by 212, demonstrating that 212 was formed and used for improper purposes.

(Id. at 8-9).

[T]he former husband, Inga Kozel, Markus Hogelshofer, and Michael Freeman manufactured a backdated, falsified "lease" for production in discovery...undertaken to mislead the former wife and the court, i.e., to create the false impression that it was a *bona fide* lease dated September of 2014 and that it was the basis for the former husband and his wife's use and enjoyment of Unit C/D at the Walker Tower, when in reality, it was not.

(Id. at 9).

Finally, the court finds that...the testimony by Michael Freeman on the topic of 212's ownership and control was the product of the conspiracy previously found by the court, i.e., to offer falsified evidence and false testimony to effectuate a fraud on the court.

(Id. at 9).

38. By reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: 4-1.2(d) (A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows or reasonably should know is criminal or fraudulent); 4-3.3 (Candor toward the tribunal); 4-3.4(b) (A lawyer must not fabricate evidence, nor counsel or assist a witness to testify falsely); and 4-8.4(c) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation).

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 Andrew Scott Berman, attorney for respondent, at aberman@ybkglaw.com; and that a copy has been furnished by United States Mail via certified mail No. 7017 1070 0000 4774 4184, return receipt requested to Andrew Scott Berman, attorney for respondent, whose record bar address is 1001 Brickell Bay Dr., Ste. 1704, Miami, FL 33131-4939 and via email to Jennifer R. Falcone, Bar Counsel, jfalcone@floridabar.org, on this 19th day of November, 2019.



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 Jennifer R. Falcone, 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 jfalcone@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.