IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

BERNARDO ROMAN III,

Respondent.

_____/

Supreme Court Case No.

The Florida Bar File Nos.
2014-70,055(11G)
2015-70,460 (11G)

COMPLAINT

The Florida Bar, Complainant, files this Complaint against Bernardo Roman III, Respondent, pursuant to the Rules Regulating The Florida Bar and alleges:

1. Respondent is, and at all times mentioned in the complaint was, a member of The Florida Bar, admitted on May 2, 1994 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.

3. The Eleventh Judicial Circuit Grievance Committee "G" 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.

4. This matter arises from Respondent's misconduct in three separate lawsuits that he filed in state and federal court against Michael Tein (hereinafter

referred to as Tein), Guy Lewis (hereinafter referred to as Lewis), and their law firm Lewis Tein, PL, (hereinafter referred to as Lewis Tein, or the firm) as well as his inserting himself into a pending motion for sanctions in another lawsuit, styled *Bermudez v. Bert*, in which neither he nor his client were a party.[1]

5. In each of the four above referenced actions, Respondent raised frivolous claims and presented false allegations against Lewis and Tein, despite being in possession of the evidence proving his allegations false. He further engaged in bad faith conduct of these lawsuits by taking such actions as: failing to comply with discovery requests and orders; withholding evidence; evading service of a deposition subpoena; colluding with an adversary in order to use the legal process to inflict injury on Lewis and Tein, even where same prejudiced his client; and filing a false police report against Lewis and Tein's counsel during an ongoing deposition.

[1] The four lawsuits pertinent to the instant Complaint are: *Bermudez v. Bert*, Circuit Court Case No. 2000-25777; the first State court lawsuit filed by Respondent against Lewis and Tein, styled *Miccosukee Tribe v. Lewis and Tein, et. al*., Circuit Court Case No. 12-12816, presided over by Judge Thornton; the federal lawsuit styled *Miccosukee Tribe v. Lewis and Tein, et al.,* Case No. 12-22439, presided over by United States District Court Judge Cooke. It should also be noted, Respondent filed a second state court lawsuit against Lewis and Tein after the federal suit was dismissed, which raised identical claims as those dismissed in the federal suit, and which matter was presided over by Judge Jennifer Bailey, case number 13-35956. Respondent did not move to dismiss that suit despite the finding that there was no factual basis for the claims in the federal lawsuit. Judge Bailey later dismissed the case with prejudice on *res judicata* grounds.

6. These matters began with the case of *Bermudez v. Bert*. This case was a wrongful death action involving the tragic deaths of two individuals at the hands of a drunk driver, Ms. Tammy Gwen Billie. Ms. Billie and her father, whose car she was driving, are members of the Miccosukee Tribe of Indians (hereinafter referred to as the Tribe). Lewis and Tein represented Billie and Bert in that action. Lewis and Tein also represented other members of the Tribe, as well as the Tribe itself in various capacities between 2005 and 2010.

7. In the *Bermudez* case, the plaintiffs were represented by Ramon Rodriguez. Rodriguez obtained a judgment for approximately $2,900,000.00 against Billie and her father. Extensive post trial litigation ensued in their attempts to collect same. As the tribal members did not have sufficient funds to pay the judgment, Rodriguez attempted to collect the judgment from the Tribe itself.

8. During post trial proceedings, Rodriguez filed over twenty motions for sanctions against Lewis Tein. None of these were granted, with the exception of the twenty-first motion, although several motions for sanctions were granted against Rodriguez. The twenty-first motion for sanctions was based on Lewis and Tein's objection to production of certain tax documents. The court found that Lewis and Tein did not make clear in its response that there were no responsive documents available and sanctioned Lewis Tein $3,500.00 for the attorney's costs in litigating that objection.

9. During the course of the hearing on the above referenced motion for sanctions, Tein made a statement indicating that the Defendants (Billie and Bert) were responsible for their attorney's fees in the lawsuit.

10. Upon learning of this statement Respondent, Bernardo Roman, III, who was hired to represent the Tribe under the Tribe's newly elected leadership, contacted Rodriguez and provided Rodriguez with 61 checks showing payments of attorney fees to Lewis and Tein by the Tribe in the Billie/Bert and other matters. Respondent did this despite the fact that it provided an avenue for the plaintiff to pursue collection on the judgment from the Tribe itself, instead of solely from the defendants. Indeed, as a result of this action Rodriguez obtained a $7,000,000.00 judgment against the Tribe.[2]

11. Each court that has examined this issue has determined that Respondent's actions resulted from the bad blood, or personal animosity, held by Respondent and the new tribal leadership against the former tribal administration and its associates, including Lewis and Tein. Judge Dresnick stated, "because of bad blood the Tribe did whatever it could to hurt Lewis & Tein. And part of what they did was they dropped this gift on your doorstep of cancelled checks, which you never would have known about but for bad blood between Lewis & Tein and

[2] This judgment was overturned on appeal.

the Tribe. So – they gave you that gift because they wanted to use you to hurt Lewis & Tein. Which you did."

12. These 61 checks sparked an additional two years of litigation, in which Rodriguez, aided and abetted by Respondent, pursued sanctions against Lewis and Tein for perjury and fraud on the court. Lewis and Tein continuously maintained that Tein's statement was true and the defendants were responsible for their fees. The checks from the tribe were the result of the Tribe loaning, or fronting, funds to the defendants Billie and Bert, which funds were being paid back to the Tribe through reductions in the defendants' quarterly disbursements of Tribal funds. Accordingly, it was in fact the defendants who were ultimately responsible for paying the attorneys' fees.

13. Upon order of the trial court, Respondent filed an affidavit in the action which purported to inform the court as to whether there were any records of tribal loans to the defendants for attorney's fees in this case. Rather than provide documents responsive to the court's inquiry, Respondent filed a false affidavit indicating that there were no loan documents or other records of the Tribe which would indicate the checks paid by the Tribe to Lewis and Tein were loans to the defendants Billie and Bert for legal fees. However, at all times material to this action, Respondent was in possession of numerous documents which refuted the

statements in his affidavit, and which would have provided a truthful, or non-misleading, response to the court.

14. For example, Respondent attached to the false affidavit a document which expressly showed reductions in the amounts of Billie's and Bert's quarterly distributions from the Tribe, and specifically lists Lewis and Tein's fees as a basis for the reduction in the distribution. Additional examples of this type of documentation in Respondent's possession or control at the time he filed the false affidavit included: copies of Lewis and Tein's invoices which were signed by the defendants or their family members and indicating approval for payment of Lewis and Tein's fees; and an accounts receivable ledger entitled "A/R Legal" dated September 30, 2005, which was located in Respondent's office, but which was not turned over to Lewis and Tein or the court despite multiple discovery requests, and which clearly demonstrated a running balance of legal fees and reimbursements through reductions in distributions owed by the Tribe to individual tribal members, including Billie and Bert, and referred to as "NTDR deductions;" audited financial statements that specifically reflected loans receivable from tribal members; loan or assistance request forms and purchase orders reflecting those loans.

15. Following the two years of litigation sparked by Respondent's actions, and after the close of the evidence at the evidentiary hearing, Rodriguez withdrew the perjury allegation. Notwithstanding same, Judge Dresnick made the specific

finding that Lewis and Tein did not commit perjury or fraud and did not engage in a lack of candor to the court.

16. During the pendency of the above described events, Respondent filed lawsuits on behalf of the new tribal leadership against Lewis and Tein and the firm. The lawsuits alleged the same perjury and fraud on the court allegations from the *Bermudez* case, as well as malpractice, fraud, conspiracy to commit fraud, and various state and federal RICO claims. The factual allegations in both the state and federal actions were essentially the same. In addition to the allegations from the fraudulent "loan scheme" devised as part of the motion for sanctions in the *Bermudez* case, Respondent's allegations were based in large part on an alleged "pay to play" kickback scheme. It was asserted that the former tribal chairman embezzled millions of dollars from the Tribe, and engaged in kickback schemes with professionals associated with the Tribe, including Lewis and Tein. Under this scheme, Lewis and Tein would allegedly charge inflated, false and/or fraudulent fees, upon payment of which they would kickback a percentage of those fees to the former chairman. The federal lawsuit was later amended to include another unfounded allegation that Lewis and Tein failed to report and/or pay federal income taxes.

17. The allegations contained in the lawsuits were supported by nothing more than rumor, innuendo and outright speculation. In each of the lawsuits the

trial judges found Respondent's allegations to be frivolous and without any factual or evidentiary support.

18. For instance, on December 15, 2013, Judge Thornton granted Lewis Tein's motion for summary judgment in the state court lawsuit, and held that there was no evidence to support the allegations. Of particular note, on page 7 of the Order granting summary judgment, Judge Thornton held that, "the thousands of pages of record evidence adduced in this matter . . . all disclose that no false statements or evidence of fictitious or improperly created or fraudulent legal fees or expenses have been perpetrated by Lewis Tein upon the Tribe. The Tribe has failed to identify one fictitious time entry, invoice or legal matter attributable to Lewis Tein." Judge Thornton's Order reiterates these findings as to each count of the state court lawsuit, finding over and over again that there was no evidence to support the allegations. With respect to the claims of fraud, conspiracy and RICO violations, the court found that, "[t]he Record is utterly devoid of any evidence of criminal intent or intentional misconduct." Indeed, at page 10, Judge Thornton stated:

> Instead, the record thoroughly reveals that the Tribe's officers… and former employees... possess no knowledge of Lewis Tein allegedly overbilling the Tribe, committing fraud, violating the Tribe's trust, submitting inaccurate or untruthful billings, or doing anything wrong. To the contrary, the Tribe's own submitted internal financial records and administration confirms that all actions were fully disclosed and memorialized in audited financials and other Tribal records.

19. The Third District Court of Appeal affirmed Judge Thornton's entry of summary judgment. *Miccosukee Tribe of Indians of Florida v. Guy Lewis, et al.*, 165 So.3d 9 (Fla. 3d DCA 2015). Final judgment against Respondent and the Tribe was entered on July 15, 2015, and Lewis Tein timely filed motions for fees costs and damages. In his December 12, 2015 Order granting same, Judge Thornton reiterated his findings and held at page 5:

> This Court has already reviewed thousands of pages of record evidence and made extensive factual findings which are set forth in the Court's Order granting summary judgment in favor of Lewis Tein. The Court reaffirms and incorporates those findings, including the Court's conclusion that there is no record evidence supporting the allegations in the Complaint. The additional evidence received during the evidentiary hearings on Lewis Tein's motions reinforces that conclusion and also the Court's prior determination that ***the Tribe and its counsel commenced and continued to litigate this matter in the face of overwhelming evidence demonstrating the claims against Lewis Tein were unfounded and frivolous***. (emphasis added).

20. Judge Thornton specifically found that Respondent did not act in good faith reliance on the claims of his client. Rather, both he and the newly elected Tribal leadership, acting out of personal animosity for Lewis Tein, pursued the claims in the lawsuit in bad faith, and without regard for the truth. Accordingly, Judge Thornton held both the Tribe and Respondent jointly and severally liable for the reasonable attorney's fees incurred by Lewis Tein in defending against this entirely frivolous lawsuit.

21. Similarly, in the federal lawsuit, Judge Cooke found Respondent to have acted in bad faith as a result of his personal animosity against Lewis Tein when he filed a similar frivolous lawsuit against them in federal court. Specifically, Judge Cooke found, "The Miccosukee Tribe of Indians of Florida's internal feud blinded its counsel, Bernardo Roman, III, Esquire and Roman Law, from adhering to the ethical tenets of our profession while pursuing legal claims against Miccosukee Tribe of Indian's of Florida's former administration, and particularly against Defendant's Guy Lewis, Esquire, Michael Tein, Esquire, Lewis Tein, PL (collectively, "Defendant's Lewis Tein) and Dexter Wayne Lehtinen, Esquire."

22. Judge Cooke dismissed the federal lawsuit on jurisdictional grounds, as well as for failure to state a cause of action, but retained jurisdiction over the parties to hear motions on sanctions. After holding a nine day evidentiary hearing, Judge Cooke found that Respondent conducted an inadequate pre-suit investigation, which he undertook without any real intention of discovering whether valid claims actually existed against the defendants. Rather, he initiated the investigation with a conclusion in mind, and then searched for facts to support his conclusion, and disregarded or ignored all evidence that did not align with his theory of liability.

23. After the multi day evidentiary hearing, Judge Cooke found that there was no evidence, or only patently frivolous evidence, to support any of the factual contentions and allegations in the lawsuit. She found specifically that there was no evidence of a "loan scheme," or of a "kickback scheme." Roman himself testified that he could not identify a single transaction of Lewis and Tein giving money to the former Chairman, nor could he cite one instance where Lewis Tein's billing was actually fake or fraudulent. Rather, he relied in part on the aggregate amount of Lewis Tein's billing as indication of the fraud, which the Court found to be disingenuous since he himself billed the Tribe at a similar rate and aggregate amount. Judge Cooke also found the allegations against Mr. Lehtinen to be frivolous. Accordingly, Judge Cooke granted sanctions directing the Tribe and Respondent to pay $975,750.00 to Lewis Tein and $95,640.00 to Dexter Lehtinen, for their attorney's fees incurred from defending a federal lawsuit "that has no reasonable factual basis, [and] which unreasonably and vexatiously multiplied the proceedings . . . ."

24. In addition to the bad faith conduct of filing false and frivolous pleadings, Respondent engaged in numerous acts of misconduct in his litigation of the underlying proceedings. Examples of Respondent's misconduct include:

25. In his lawsuits, Respondent improperly published the home addresses of former United States Attorney's Lewis and Tein, as well as descriptions of

personal property owned by Lewis and Tein. The courts were required to issue orders striking and sealing the addresses.

26. Despite his efforts to evade service of a deposition subpoena, Respondent was ultimately subpoenaed for deposition in the *Bermudez* case. At the deposition, he failed to produce copies of the 61 checks that he had previously provided to Rodriguez, he failed to produce copies of the Lewis Tein invoices he previously provided to Rodriguez, he misrepresented the date he began communicating with Rodriguez, and stated that he represented Jimmie Bert in an unrelated tax matter. This statement was subsequently shown to be a misrepresentation when he later testified before Judge Dresnick at a December 2012 hearing, wherein he indicated that he did not represent Mr. Bert on any matter.

27. A short time prior to her scheduled deposition in the *Bermudez* matter, Respondent fired Ms. Jodi Goldenberg, who served as an accountant in the Tribe's finance department for over 21 years. Ms. Goldenberg was terminated following her refusal to testify consistently with Respondent's allegations that the funds the Tribe paid to Lewis Tein were not loans to Billie and Bert. At her subsequent deposition by Lewis and Tein, Ms. Goldenberg reiterated her knowledge that the funds paid to Lewis Tein were loans that were being paid back to the Tribe through reductions in the defendants' quarterly disbursements, and that Respondent hid

loan documents demonstrating these facts. Additionally, in her testimony at the evidentiary hearing on sanctions in the federal case, Ms. Goldenberg testified that she spoke to Respondent about the loans and their validity, but he simply insisted they were "not approved loans." After Respondent fired Ms. Goldenberg, he listed her as a co-conspirator with Lewis and Tein and the former administration of the Tribe, and filed a separate lawsuit against her.

28. Despite numerous prior requests for production of responsive documents, it was not until a June 2013 deposition of the Tribe's Custodian of Records that the responsive documents demonstrating the loans for attorney's fees, and the subsequent reductions in the defendants' quarterly disbursements, were produced. Respondent never provided these documents despite the fact that he was either in outright possession of them, or had access to them, at all times pertinent hereto.

29. In the middle of taking the deposition of Lewis and Tein, Respondent made a call to 911 in which he made false allegations against Mr. Paul Calli, the lawyer representing Lewis and Tein.

30. The depositions occurred under the direct supervision of Special Master (Ret.) Judge Ellen Leesfield. At the outset of the depositions, Judge Leesfield placed a bowl of peanuts on the table in the conference room. Ms. Shenna Perez-Martin, an assistant who accompanied Respondent to the

depositions, announced that she was allergic to nuts and the bowl was removed. Later, Judge Leesfield brought a bowl of pistachios into the conference room, assuming that the allergy was only to peanuts. Ms. Perez-Martin again indicated her allergy, and the bowl was removed to the back of the conference room. Later the nuts were removed to the reception area.

31. During a break in the depositions, at approximately 12:15 pm, Ms. Perez-Martin had a conversation in the reception area with Respondent, wherein she indicated that she had begun to experience an allergic reaction to the nuts and was departing to visit an urgent care where she could receive treatment for same. During this conversation, Mr. Calli, who was representing Lewis and Tein at the deposition, emerged from the conference room, took a handful of pistachios from the bowl in the reception area, and walked between Ms. Perez-Martin and Respondent back into the conference room. Ms. Perez-Martin left the deposition.

32. Notwithstanding same, over an hour later, following delivery of lunch for the deposition participants, Respondent made a 911 call to the Coral Gables Police Department and stated:

> RESPONDENT: Hi. Yeah, one of the attorneys in my office, she was just the victim of a battery by an attorney on the other side who has a history of domestic violence.
>
> 911 OPERATOR: Okay, sir, can you tell me when this occurred.

RESPONDENT: About ten minutes ago. She's allergic to pistachios.

911 OPERATOR: Okay.

RESPONDENT: When he found out, he purposely put pistachios in her food and in front of her, and she had to be taken to the hospital. That's where she is, in urgent care right now.

. . .

RESPONDENT: Right now there is a restraining order against him in a domestic violence case, in a family matter. He has a long history of some anger issues. And we were here taking a deposition and the minute he found out that one of my assistants was allergic to peanuts and to pistachios, he just grabbed a bunch of them, put them in front of her face, and then put them on her food.

911 OPERATOR: Okay. So he put it in her face or rubbed it against her or –

RESPONDENT: In her face. Put it - - got a bunch of them, put them in front of her face so she will get ill, because she immediately - - her throat immediately shut down. That's how allergic she is. She has a long history of it. And she advised it pretty clearly.

Now, if that wasn't enough, when lunch came in - - we just ordered lunch.

911 OPERATOR: Okay

RESPONDENT: He got her lunch and he put a bunch of pistachios in there so when she touched it, she was just - - she just had to go to the hospital. She's at the urgent care.

33. Ms. Perez-Martin confirms that she was already experiencing an allergic reaction due to the nuts placed in the conference room by Judge Leesfield, before Mr. Calli ever went near the nuts. She further denies that Calli ever placed

the nuts in her face. In fact, according to the police report, Ms. Perez-Martin stated that, "at no time did she feel there was any intentional attempt to cause her an allergic reaction by anyone at the deposition." Ms. Perez-Martin confirmed that she left the deposition prior to lunch being delivered, and accordingly it is indisputable that Respondent falsely stated that Calli placed the nuts in her lunch and she had to go to the hospital when she touched it. Moreover, Ms. Perez-Martin indicates that Respondent subsequently became angry with her when she refused to change her story or press charges against Calli. She was later terminated by Respondent.

34. When the police arrived to investigate the allegations, they separated Mr. Calli and would have arrested him but for the intervention of Judge Leesfield and Judge Platzer, who was also present at the deposition. Both judges indicated that this was a "set-up" by Respondent, and neither saw Mr. Calli do anything to Ms. Perez-Martin.

35. Respondent's numerous misrepresentations in the 911 call created the false and misleading impression that Calli and Ms. Perez-Martin knew each other and had civil domestic proceedings between them. In fact, the two were not previously acquainted and Calli was not under any stay away or restraining order at the time Respondent made the 911 call, and certainly not one involving Ms. Perez-Martin.

36. By reason of the foregoing, Respondent has violated the following Rules Regulating The Florida Bar: 4-1.2(d) (Assist Clients in a Criminal or Fraudulent Act); 4-3.1 (Meritorious Claims and Contentions); 4-3.3 (Candor Toward the Tribunal); 4-3.4 (Fairness to Opposing Party and Counsel); 4-4.1 Truthfulness in Statements to Others); 4-8.1 (Bar Admission and Disciplinary Matters); 4-8.4(c) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); and 4-8.4(d) (A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice).

WHEREFORE, The Florida Bar prays Respondent will be appropriately disciplined in accordance with the provisions of the Rules Regulating The Florida Bar as amended.

Respectfully submitted,

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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 Bernardo Roman, III, Respondent, at bromanlaw@bellsouth.net using the Efiling Portal and that a copy has been furnished by United States Mail via certified mail No. 7016 0750 0000 3623 6426, return receipt requested to Respondent, whose record bar address is 1250 SW 27th Ave Ste 506, Miami, FL 33135-4751; and via email to Jennifer R. Falcone, Bar Counsel, jfalcone@flabar.org, on this 21st day of July, 2016.

Adria E. Quintela, 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@flabar.org. Respondent need not address pleadings, correspondence, etc. in this matter to anyone other than trial counsel and to Staff Counsel, The Florida Bar, Lakeshore Plaza II, Suite 130, 1300 Concord Terrace, Sunrise, Florida 33323, aquintel@flabar.org.

MANDATORY ANSWER NOTICE

RULE 3-7.6(h)(2), RULES OF DISCIPLINE, EFFECTIVE MAY 20, 2004, PROVIDES THAT A RESPONDENT SHALL ANSWER A COMPLAINT.