

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO. 07-21256-CIV-JORDAN

JOHN B. THOMPSON,)
)
Plaintiff,)
)
vs.)
)
THE FLORIDA BAR, et al.,)
)
Defendants.)
)

ORDER DENYING MOTION TO VACATE

Mr. Thompson's latest motion to vacate [D.E. 379], treated as another motion under Rule 60(b), is DENIED.

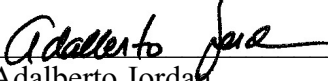
Mr. Thompson contends that the Bar has knowingly relied on the false testimony of attorneys Larry Kellogg and Al Cardenas in the disciplinary proceedings against him. Taken as true, Mr. Thompson's allegations suggest that the complaints filed by Mr. Kellogg and Mr. Cardenas against him are meritless and should not have been pursued by the Bar. This is, however, insufficient to establish bad faith and avoid abstention. As I explained in the order of dismissal, "an attorney involved in disciplinary proceedings cannot avoid *Younger/Middlesex* abstention by the simple expedient of maintaining (under oath or not) that the disciplinary charges against him lack merit." *See* Order [D.E. 347] at 17. Mr. Thompson's remedy was to present these arguments to Referee Tunis in the disciplinary proceedings -- which he apparently has done.

Mr. Thompson also suggests that the Bar has committed fraud on the court by falsely asserting that it had a factual basis to prosecute him. I disagree. The record does not support Mr. Thompson's allegations. The Bar's position in this case was that it had "no control over the circumstances which have caused multiple third-parties to file complaints against Mr. Thompson. The Bar, in good faith, has only opened, investigated, and where appropriate closed those complaints." *See* Bar's Resp. to Mot. to Strike [D.E. 85] at 3. *See also* Bar's Mot. to Dismiss [D.E. 118] at 5.

Furthermore, I assumed in the order of dismissal that the Bar's claims were factually and legally baseless (as alleged by Mr. Thompson). *See* Order at 17. I did not rely on any representation by the Bar as to the strength of the disciplinary complaints filed against Mr. Thompson when I

decided that abstention was appropriate. Accordingly, there is no fraud on the court warranting vacatur. *See Zakrzewski v. McDonough*, 490 F.3d 1264, 1267 (11th Cir. 2007) (citing *Travelers Indem. Co. v. Gore*, 761 F.2d 1549, 1551 (11th Cir. 1985)).

DONE and ORDERED in chambers in Miami, Florida, this 18th day of January, 2008.



Adalberto Jordan
United States District Judge

Copy to: All counsel of record