IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

JOHN B. THOMPSON,

Plaintiff,

v. Case No. 07-21256 (Judge Adalberto Jordan)

THE FLORIDA BAR and
DAVA J. TUNIS,

Defendants.

PLAINTIFF'S *VERIFIED* MOTION FOR RELIEF FROM THIS COURT'S ORDER OF DISMISSAL FOR FRAUD

COMES NOW plaintiff, John B. Thompson, hereinafter Thompson, as an attorney on his own behalf, and moves this court for an order, pursuant to Rule 60 (b) (3), Federal Rules of Civil Procedure, for fraud, misrepresentation, and misconduct of both the opposing party and its counsel, to-wit:

This court will recall that it dismissed, without prejudice, this cause of action, on *Younger* abstention grounds. Defendant The Florida Bar's argument under *Younger* was that Thompson would be able to present his constitutional defenses and arguments within the state disciplinary process. Here, then, is this court's reasoning, based upon that assurance:

Under Ex Parte Young, 209 U.S. 123 (1908), a federal court does not violate the Eleventh Amendment in enjoining state officials to conform their future conduct to the requirements of federal law. Franchise Tax Bd. v. Lapin (In re Lapin), 226 B.R. 637, 646 (9th Cir. BAP 1998). But this court concluded that exercising its Ex Parte Young jurisdiction would run afoul of the Younger doctrine, which calls upon federal courts generally to abstain from granting injunctive or declaratory relief which would interfere

with pending state judicial proceedings. Hirsh, 67 F.3d at 712 (citing Younger, 401 U.S. at 40-41). Abstention under the doctrine "is required if the state proceedings (1) are ongoing, (2) implicate important state interests, and (3) ***provide the plaintiff an adequate opportunity to litigate federal claims***." Hirsh, 67 F.3d at 712 (citing Middlesex County Ethics Comm., 457 U.S. at 432).

The centerpiece of Greenberg Traurig's assurance to this court that Younger abstention must be invoked by this court was the assurance that plaintiff would have an adequate opportunity to litigate his federal claims, including his federal constitutional defenses within the disciplinary process.

Greenberg Traurig's Barry Richard hauled out, for example, the *Mason* case, in which the Middle District of Florida invoked *Younger* abstention because attorney Mason, Greenberg Traurig assured that sister federal district court, would have ample opportunity to present his constitutional defenses to the grievance committee, to the Board of Governors, to the Referee, and then to the Florida Supreme Court in a Petition for Review.

Guess what? Plaintiff Thompson was denied a hearing and consideration of his constitutional defenses at ALL of these four levels of the state disciplinary process. This court cannot ignore this fact and allow its dismissal order to stand as it was procured by the demonstrable fraud, misrepresentation, and misconduct of The Bar and its record counsel herein. Proof:

Attached hereto is the Amended Final Referee's Report of Dava Tunis. Read it. It is utterly devoid of any ruling on ***any*** of Thompson's constitutional defenses. That is because the Referee never addressed them and never ruled on them. This refusal to

address these issues is contrary to this "Comment" at the end of Florida Bar Rule 3-7.6 which commands the Referee to issue a Final Report in line with the following:

"A comprehensive referee's report under subdivision (m) is beneficial to a reviewing court so that the court need not make assumptions about the referee's intent or return the report to the referee for clarification. The referee's report should list and address ***each issue in the case and cite to available authority*** *for the referee's recommendations concerning guilt and discipline." [***emphasis added***]*

This refusal of the Referee to address any of these constitutional issues makes a lie of Greenberg Traurig's assertion to this federal court that they would be addressed by the Referee.

Look at the attached Permanent Disbarment Order of September 25, 2008, entered by the Florida Supreme Court. It is utterly devoid of any rulings on any of Thompson's constitutional defenses, because the Florida Supreme Court disingenuously treated the entire matter as "uncontested."

Finally, the aforementioned *Mason* case, which was highlighted to this court by Greenberg Traurig with a filed notice to this court of supplemental legal authority after the October 2007 hearing before this court, states that each Bar respondent will have an opportunity, *before trial*, to present his constitutional defenses to the Board of Governors.

After this court granted *Younger* abstention to The Bar on the basis of Thompson's supposedly "adequate state remedy" to have his constitutional defenses heard by the Governors, Bar President Frank Angones denied, in writing, Thompson his right to do just that.

When Thompson telephoned Barry Richard to ask how he could be denied this right that is set forth in a case first argued to the Middle District Court by Barry Richard and which was then cited to this Southern District Court by the same Barry Richard as the basis for *Younger* abstention, Barry Richard told the undersigned, so help me God:

"Oh, well the court was wrong in Mason. You have no right to present your constitutional defenses to the Governors."

It was a monstrous, unethical lie to *this court* to tell it *Younger* abstention was appropriate and unnecessary in light of all the substantive due process Thompson would have that would constitute an "adequate state remedy" within the disciplinary process to have his constitutional arguments heard and considered.

As an aside, *Rooker-Feldman* abstention cannot now be invoked against Thompson by The Bar, because such abstention is premised upon the notion that the plaintiff has had his claims heard fully before *some* tribunal. Thompson had them heard by neither this court nor by any player in the disciplinary process, and he timely complained about that. Thus, he is not prohibited by Rooker-Feldman from raising them now, but that stunt was the plan all along by a defendant and its counsel who would first say Thompson was "too early" with his prayer for federal judicial relief and now say he is "too late." This is demonstrably unethical nonsense, as indicated by the attached exhibits bought and paid for by a dissembling Bar and an unethical Barry Richard.

This was a bait and switch for which the Greenberg Traurig law firm is notorious, and it should concern this court that that law firm's fraud was perpetrated upon this court at the cost of Thompson's law career.

This court may think, along with its colleague, The Honorable Paul Huck, that the undersigned is a total jerk. Maybe plaintiff is, for the sake of argument. That is irrelevant. What is relevant and what mandates granting this motion, is the outlandish and consequential fraud by Greenberg Traurig and by The Florida Bar that has corrupted this court and this entire judicial process.

A recent Florida Public Records Law Request by The Florida Bar's Mary Ellen Bateman by the post this weekend proves that in the last five years Greenberg Traurig has billed The Florida Bar nearly ***three million dollars*** for outside legal services which are not even authorized to be paid by The Florida Bar's By-Laws. Nearly $300,000 of that has been billed by Greenberg Traurig to The Bar for representing it (again without By-Law authority to do so) against Thompson.

No wonder Greenberg Traurig participated in The Bar's waiver of all insurance coverage for any claims that Thompson might bring against it (like the ones paid by The Bar to Thompson in 1992 by its insurer). Greenberg Traurig has a cottage industry going here whereby it will miscite any case to any court, breach promises made to Bar respondents, and do simply whatever it takes to protect from federal judicial scrutiny the corrupted and corrupted state disciplinary system that protects The Bar and screws ethical lawyers.

Plaintiff did not know and thus this court did not know, when this case was pending before it, that the aforementioned "waiver of insurance coverage" had even occurred by The Bar upon Greenberg's insistence. The Bar's General Counsel Paul Hill had hidden that fact from Thompson for three years, and it was only divulged when Nationwide Insurance let slip the fact that The Bar waived its insurance coverage so that

the all-purpose fixer law firm, Greenberg Traurig, could do whatever The Bar wanted it to do. Even Jack Abramoff would blush. Thus, we now have the commercial motivation and explanation for this fraud by Greenberg Traurig and The Bar. The former gets paid handsomely out of Bar members' dues because it will do *anything* to earn those ill-gotten fees.

This waiver of insurance coverage is in clear violation of the Florida Bar's By-Laws which mandate that insurance coverage, including liability insurance, "shall" be kept in place at all times. It is just another facet of the fraud, misrepresentation, and misconduct by both The Bar and its record counsel herein that mandates granting the relief and plaintiff now seeks.

I solemnly swear, under penalty of perjury, that the foregoing facts are true, correct, and complete, so help me God.

I HEREBY CERTIFY that this has been served upon record counsel this 17TH day of August, 2009, by the court's electronic system.

/s/ JOHN B. THOMPSON, Plaintiff
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