

MEDIATOR QUALIFICATIONS BOARD
Southern Division

In Re: Saul Cimpler

Case Number: MQB2015-007

Panel: The Honorable Lee Ann Schreiber, Chair
Edward Birk
Salvatore Gardino
Hal Wotitsky
Rodney Romano

Advisor to the Panel: Irv J. Lamel, Esq.

APPEARANCES

Prosecutor: Melvia Green, Esq.

Mediator: Saul Cimpler

Also Present: Susan Marvin, Esq., Acting Director of DRC

DECISION INCLUDING FINDINGS AND CONCLUSIONS OF THE PANEL

The Mediator Qualifications Board, Southern Division, by its duly designated five member panel, held a formal hearing in this matter on August 2, 2016.

FORMAL CHARGES

The Formal Charges allege that the Respondent fails to possess good moral character as required by Rule 10.110, Florida Rules for Certified and Court Appointed Mediators, for continuing certification by the Florida Supreme Court as a Civil Circuit, Family and Appellate mediator, and that the Respondent violated Rules 10.200, 10.220, 10.300, 10.310(b), 10.500, 10.520, 10.530, 10.600, and 10.670, Florida Rules for Certified and Court Appointed Mediators.

HEARING

EXHIBITS

During the hearing, the following exhibits, except where indicated, were admitted into evidence as exhibits for the prosecution:

- Exhibit 1 - Notice of Preliminary Hearing - July 1, 2016
- Exhibit 2 - Formal Charges - January 28, 2016
- Exhibit 3 - Certified Letter to Saul Cimpler attaching Formal Charges - February 3, 2016.
- Exhibit 4 - Certified Letter to Saul Cimpler regarding assignment of Panel - April 15, 2016.

- Exhibit 5A - Saul Cimbler's Motion to Compel Discovery - February 4, 2016
- Exhibit B - Withdrawn
- Exhibit C - Saul Cimbler's Motion to Disqualify and Discharge Panel for Failure to Comply with Rule 10.710(l), Florida Rules Applicable to Certified and Court Appointed Mediators - February 4, 2016
- Exhibit D - Saul Cimbler's Notice of Intent to Request Judicial Notice - February 15, 2016
- Exhibit E - Saul Cimbler's Notice of Filing Exerts (sic) of the Response of the Supreme Court Committee on Dispute Resolution Rules and Policy in Support of his Response to DRC's Motion to Strike Amended Response - February 16, 2016
- Exhibit F - Saul Cimbler's Motion to Dismiss Complaint for Lack of Standing - February 23, 2016
- Exhibit G - Saul Cimbler's Motion to Reset Panel Hearing to an Appropriate Date and Time - March 23, 2016
- Exhibit H - Saul Cimbler's Conditional Motion to Stay Pending the Supreme Court's Mandate on Pending Writs - March 24, 2016
- Exhibit I - Saul Cimbler's Motion to Compel DRC to Publish Bench Brief - April 4, 2016
- Exhibit J - Saul Cimbler's Motion to Compel the DRC Investigator to Publish Investigative Report - April 4, 2016
- Exhibit K - Withdrawn
- Exhibit L - Saul Cimbler's Motion to Disqualify, with Cause the Honorable Judge Bryan Feigenbaum - April 7, 2016
- Exhibit M - DRC's Motion in Limine to Strike any Testimony of the Honorable Rodney Smith - April 7, 2016
- Exhibit N - Saul Cimbler's Motion to Discharge Panel Advisor for Lack of Administrative Capacity and for Cause
- Exhibit O - Saul Cimbler's Motion to Quash Reassignment Purported Reassignment of Panel in MQB 15-007 - April 29, 2016
- Exhibit P - Saul Cimbler's Motions Pursuant to Rule 2.160 Fla.R Jud Admin, to Reconsider, Vacate and/or Amend the Previous Orders Entered by the Honorable Judge Bryan Feigelbaum, Former Judicial Chair of the Panel for MQB 15-007 - April 29, 2016
- Exhibit Q - Saul Cimbler's Motion to Prohibit Ex Parte Communication by the DRC with the Panel or Panel Chair - April 24, 2016
- Exhibit R - Pretrial Order - June 6, 2016
- Exhibit S - Saul Cimbler's Motion to Dismiss Complaint in MQB-007 for Failure to Comply with Rule 10.820(B) - July 7, 2016
- Exhibit T - Affidavit of Susan C. Marvin, J.D. - July 13, 2016
- Exhibit U - Saul Cimbler's Notice of Filing - July 13, 2016
- Exhibit V - Saul Cimbler's Notice of Filing - July 7, 2016
- Exhibit W - Saul Cimbler's Notice of Withdrawal of Imputed Agreement Regarding Judicial Notice - July 25, 2016
- Exhibit X - Exhibit 7 to Saul Cimbler's Response to the Dispute Resolution Center's

- Letter of Complaint Dated August 28, 2015 - IN RE: MQB 2015-007 - October 8, 2015
- Exhibit Y - Response of the Supreme Court Committee on Alternative Dispute Resolution Rules and Policy to Comments of the Eleventh Judicial Circuit and the Florida Bar Alternative Dispute Resolution Section
 - Exhibit Z - Sanctions - Imposed - July 12, 2016
 - Exhibit AA - Withdrawn
 - Exhibit BB - DRC's Notice of Intent to Rely - July 28, 2016
 - Exhibit CC - Withdrawn/Denied
 - Exhibit 6 - Opinion in Aurora Bank v. Cimpler, filed June 17, 2015, Case Nos. 3D14-2873 & 3D14-2872

During the hearing, the following exhibits, except where indicated, were admitted into evidence as exhibits for the Respondent:

- Exhibit 1 - MEAC Opinion 2011 - 003
- Exhibit 2 - Denied
- Exhibit 3 - Denied
- Exhibit 4A - Composite Exhibit of MQB 2013-005 (William Todd Lax)
 - B - Composite Exhibit of MQB 2012-018 (Ronald Weeks)
 - C - Composite Exhibit of QCC 2012-014 (Karen A. Watson)
 - D - Composite Exhibit of QCC 2014-027 (Miriam L. Mendieta)
 - E - Composite Exhibit of QCC 2015-013 (Zachariah M. Kilgus)
 - F - Composite Exhibit of QCC 2013-057 (Keith Alan Manson)
- Exhibit 5 - Florida Statute 44.404 (1) and (2)
- Exhibit 6 - Opinion in Aurora Bank v. Cimpler, 166 So. 3d 921 (Fla. 3d DCA 2015)

WITNESSES

Witnesses called by the prosecution:

None

Witnesses called by the Respondent:

Susan Marvin, Esq., Acting Director of the DRC
Saul Cimpler

FINDINGS OF FACT

Based on the oral and documentary evidence presented at the hearing, the Hearing Panel makes the following findings of fact:

The Dispute Resolution Center relies mainly on the published opinion in *Aurora Bank v. Cimpler and Florida Mediation, LLC*, 166 So. 3d 921 (Fla. Third DCA 2015) and that opinion sets forth the underlying facts, which the Panel accepts. Respondent Cimpler offered testimony from the Dispute Resolution Center as well as his own testimony which is incorporated in this section.

This case involves an unusually egregious case of mediator misconduct that strikes at the very heart of public trust in the mediation profession and Florida's leadership in promoting mediation as an alternative to litigation. Respondent's testimony conspicuously reflected little understanding of the harm his actions had or could have on public confidence in the neutrality of mediators certified by the Supreme Court of Florida. Respondent has been a Supreme Court Certified mediator for many years and by his own testimony, has mediated hundreds of foreclosure cases, including cases involving the law firm that represented the bank in the underlying litigation. He testified that he had known for years that the bank's law firm and its predecessor firms abused the legal system and the mediation process as part of an ongoing business practice. Despite the knowledge he claimed to possess, he never reported any lawyer to the Florida Bar, nor did he decline their mediation assignments to protect his mediation process from abuse.¹

In this foreclosure matter, the property owner chose Mr Cimpler to mediate the case, but the bank's law firm declined to use him². Thereafter, Mr Cimpler ceased his role as a neutral facilitator and took on the role of adversary. He obtained an order from the trial court that he was entitled to a cancellation fee. His actions did not stop there. Instead, he imposed himself on the case, propounding vexatious, invasive and irrelevant discovery on the bank to learn why they declined to use him, their internal policies and procedures for choosing mediators, and a list of all cases in which he was considered and declined. As stated by the 3d DCA in *Aurora v. Cimpler*, any mediation consumer has the overriding right to self-determination, starting with the right to select or reject a mediator for any reason or no reason at all. The scope of his discovery was unnecessary to enforce the trial court's order that he be paid a cancellation fee; a mediator has no right to become involved in the underlying litigation as a litigant beyond the filing of a motion requiring a party to pay fees. Mr. Cimpler testified that he took these actions to protect the integrity

¹ It should be noted that no evidence of bank or attorney misconduct was adduced.

² Mr Cimpler testified that the firm had initially approved him in writing through emails. However, he did not introduce such emails at the Panel hearing and the Panel found his testimony not credible. Nevertheless, he sent out a Notice of Mediation to the parties and filed it with the court. Mr. Cimpler, without sending a bill for a cancellation fee, instead filed a motion with the court to order the bank to pay his cancellation fee. The Third DCA did not take issue with Mr. Cimpler's initial entitlement to a cancellation fee, and so we do not address the matter further in this opinion.

of the legal system and not out of self-interest. Yet protecting the legal system was not his concern when previously he was receiving case assignments from the bank's law firm.

Mr. Cimpler abused the legal process to advance his own interests without regard for the parties' rights to self-determination or concern for their best interests. Mr. Cimpler's conduct seriously undermined the confidence in the mediation process.

CONCLUSIONS

Based on the foregoing findings of fact, the Panel concludes as follows:

1. Rule 10.110(b) (Good Moral Character). There IS clear and convincing evidence Mr. Cimpler violated this Rule. The panel finds "good moral character" includes honesty, fairness, integrity, and the respect for the rights of others. At the time Mr. Cimpler affirmatively sought to intervene in the pending foreclosure case and then subsequently demanded discovery, he put his own self interests and the interests of his business ahead of the interests of the parties.
2. Rule 10.200 (Scope and Purpose). There IS NOT clear and convincing evidence Mr. Cimpler violated this Rule because the Panel believes this Rule to be a "guide" to all other Rules. But his actions, as alluded to in Aurora Bank case, did undermine the public confidence in the mediation process.
3. Rule 10.220 (Mediator's Role). There IS NOT clear and convincing evidence Mr. Cimpler violated this Rule.
4. Rule 10.300 (Mediator's Responsibility to the Parties). There IS clear and convincing evidence Mr. Cimpler violated this Rule. This Rule focuses on the mediator's need to act with impartiality and to ensure his business practices reflect fairness, integrity and impartiality. His affirmative actions seeking to intervene in the underlying foreclosure action did not reflect fairness, integrity or impartiality nor did they honor the parties rights of self determination as contemplated by this Rule. His conduct in initiating discovery actually placed him in an adversarial position to the parties. By the credible evidence, he set mediation without the consent of BOTH parties thereby usurping the parties' right to a forum for consensual dispute resolution.
5. Rule 10.310 (b) (Self Determination) Coercion Prohibited. There IS NOT clear and convincing evidence Mr. Cimpler violated this Rule.
6. Rule 10.500 (Mediator's Responsibility to the Court). There IS NOT clear and convincing evidence Mr. Cimpler violated this Rule.
7. Rule 10.520 (Compliance with Authority). There IS NOT clear and convincing

evidence Mr. Cimbler violated this Rule.

8. Rule 10.530 (Improper Influence). There IS NOT clear and convincing evidence Mr. Cimbler violated this Rule.

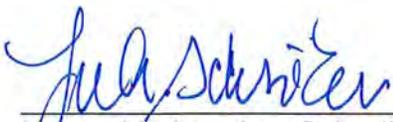
9. Rule 10.600 (Mediator's Responsibility to the Mediation Profession). There IS clear and convincing evidence Mr. Cimbler violated this Rule. This Rule deals with, among other things, forthright business practices. His affirmative actions seeking to intervene in the underlying foreclosure action and then seeking discovery (even after the case had been concluded) is not reflective of preserving the quality of the profession. His actions, in fact, well may have a chilling affect on prospective consumers of mediation services.

10. Rule 10.670 (Relationships With Other Professionals). There IS NOT clear and convincing evidence Mr. Cimbler violated this Rule.

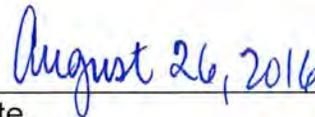
SANCTIONS

Based on the forgoing and in light of the fact that Mr. Cimbler shows no remorse or contrition for his acts coupled with his total lack of insight of the impact of his actions, the Panel finds the following Sanctions are appropriate to impose:

1. Decertification for a period of 6 months with leave to reapply at the end of this time period.
2. Ten (10) LIVE hours of ethics credits, not FAPM sponsored (because he a Director and Vice President of this organization), before reinstatement will be considered.
3. A reflective statement after completing the ethics courses.
4. Written reprimand in the form of this Decision.
5. Assessment of reasonable costs, such costs to be determined by the Panel Chair. The Dispute Resolution Center shall submit and serve on the Mediator its motion and affidavit for such costs within 30 days of the date of this Decision and the Mediator shall have 20 days after service of DRC's Motion to file his response, if any.



Honorable Lee Ann Schreiber
Panel Chair



Date