UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 19-22135-CIV-SMITH

ANNE GEORGES TELASCO,

Plaintiff,

v.

THE FLORIDA BAR,

Defendant.

_____/

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

This matter is before the Court on Defendant, The Florida Bar's Motion to Dismiss Second Amended Complaint [DE 66]; Plaintiff, Anne Georges Telasco's Opposition to the Motion [DE 70]; and Defendant's Reply [DE 73]. Plaintiff, a former member of The Florida Bar (or "the Bar"), sues the Bar for defamation in connection with disbarment proceedings and alleged fabricated contents of a grievance letter issued by the Bar. The Florida Bar argues that Plaintiff's Second Amended Complaint [DE 53] should be dismissed because it fails to state a claim and this suit is barred by the Eleventh Amendment to the United States Constitution, absolute immunity, and the *Rooker-Feldman* doctrine. The Court agrees that it lacks subject matter jurisdiction under the Eleventh Amendment. Thus, the Motion is granted and this case is dismissed without prejudice.

I. BACKGROUND

In her 318-paragraphs-long Second Amended Complaint, Plaintiff alleges claims against The Florida Bar for defamation per se, defamation, and defamation by implication. In deciding this Motion, the Court accepts all allegations in the Second Amended Complaint as true.

Plaintiff passed The Florida Bar exam in 1992 and became a licensed member of the Bar. (Sec. Am. Compl. ¶ 23.) She opened her own law firm in 1993, focusing her practice on family

law, discrimination law, and civil rights litigation. (*Id.* ¶ 24.) In 1994, Plaintiff filed employment discrimination actions against an international hotel chain on behalf of eight employees ("the Litigation"). (*Id.* ¶ 56.) Five years into the Litigation, one case was dismissed after a full administrative evidentiary hearing and, in two other cases, jury trials resulted in a finding of discrimination but gave no monetary award. (*Id.* ¶ 62.) Before the start of the third trial, the parties to the Litigation settled all eight cases for $300,000, agreeing to a payment plan of six payments of $50,000 over the course of six months. (*Id.* ¶¶ 63-64.)

Plaintiff sent a letter to all eight clients informing them of the time and date to collect their settlement checks. (*Id.* ¶ 73.) One client decided he no longer wanted to share settlement proceeds with the client whose case was dismissed and the clients who failed to recover at trial. (*Id.*) This dissatisfied client took his settlement statement to another attorney, Jonathan D. Wald, for review. (*Id.*) Upon receiving the settlement statement, Mr. Wald demanded that Plaintiff provide him with a copy of the confidential settlement agreement and access to her files, claiming he needed to review Plaintiff's costs and expenditures against the itemized settlement statements she had given to the clients. (*Id.* ¶ 77.) When Plaintiff refused his demand, Mr. Wald sent a letter to The Florida Bar purportedly on behalf of the dissatisfied client, asking the Bar to file a formal grievance against Plaintiff. (*Id.* ¶ 78.)

Around December 1999, the Bar opened an investigation into the validity of costs and expenses Plaintiff incurred in the eight cases. (*Id.* ¶ 79.) The Bar hired Carlos J. Ruga to audit Plaintiff's financial records. (*Id.* ¶ 80.) Mr. Ruga issued his findings ("Report") on July 14, 2000, concluding that all costs and expenses were incurred and properly paid and finding no violation of The Florida Bar Rules. (*Id.* ¶¶ 83-84.) The Bar ignored the Report and refused to give Plaintiff a copy of the Report. (*Id.*) Instead, the Bar immediately appointed Joseph Ganguzza, then-

Chairman of the Bar's Grievance Committee and a friend of Mr. Wald, to determine whether probable cause existed for Plaintiff's disbarment. (*Id.*) Upon appointment, Mr. Ganguzza advised Plaintiff he would close the investigation if she agreed to give the $300,000 in settlement funds to Mr. Wald, which Plaintiff refused to do. (*Id.* ¶¶ 87-88.) Following this discussion, Plaintiff retained attorney William Ullman to represent her. (*Id*. ¶ 95.)

Mr. Ullman brokered a settlement with the Bar, resulting in the Bar sending a Petition for Disciplinary Resignation and an Affidavit to Mr. Ullman for Plaintiff's signature. (*Id.* ¶¶ 96-97.) Mr. Ullman advised Plaintiff to sign the Petition, which would have made Plaintiff eligible to apply for readmission to the Bar after three or five years and would have allowed her to work as a paralegal in the interim. (*Id*. ¶¶ 100-101.) Instead of signing this Petition, on October 30, 2001, Plaintiff prepared her own resignation packet, which she submitted to the Bar at some point. (*Id.* ¶¶ 105, 108, 111-112.) Around this time, she asked Mr. Ullman to withdraw from her case. (*Id.* ¶ 106.) Additionally, on November 6, 2001, Plaintiff hand delivered to the judge apparently presiding over her disbarment proceedings a notice of filing settlement funds and a cashier's check payable to the Florida Supreme Court in the amount of $49,147.70—the sum owed to the clients she represented in the Litigation. (*Id.* ¶¶ 107-108.)

Following her resignation, Plaintiff moved to New York in early 2002. (*Id.* ¶ 130.) In September 2008, Plaintiff decided to apply to the New York Bar. (*Id.* ¶ 141.) Plaintiff requested a letter of good standing and a grievance letter from The Florida Bar. (*Id.* ¶ 142.) The Florida Bar did not issue a letter of good standing, but around September 24, 2008, Plaintiff received a grievance letter. (*Id.* ¶¶ 142, 144.) This grievance letter (and a similar version issued by the Bar in 2018) forms the basis of Plaintiff's defamation claim. The grievance letter is defamatory because it reflects cases The Florida Bar fabricated against Plaintiff; that is, instead of the one case

that led to Plaintiff's resignation, the grievance letter lists a total of four cases against Plaintiff, all stemming from the Litigation. (*Id.* ¶¶ 144-161.) The Bar did not provide Plaintiff with notice of these actions. (*Id.*) The grievance letter also fails to mention that Plaintiff submitted the settlement funds to the Bar, it attaches an incomplete copy of Plaintiff's resignation packet, and gives the false impression that the judgment of disbarment for theft entered against Plaintiff was not obtained *ex parte* and by default. (*Id.*) The grievance letter also incorporates an amended, "doctored" version of the auditor's Report. (*Id.* ¶¶ 178-199.) Based on this amended Report, the Florida Supreme Court entered a judgment of disbarment for theft against Plaintiff on July 11, 2002. (*Id.* ¶ 203.) The Florida Bar failed to disclose to the Florida Supreme Court that Plaintiff submitted the settlement funds to Bar on November 6, 2001. (*Id.* ¶¶ 200-206.) Later, Plaintiff discovered a fifth fabricated case, which was not listed in the grievance letter and was viewable only by pulling Plaintiff's Florida Bar file. (*Id.* ¶¶ 207-218.)

Upon discovering these five fabricated cases, on February 20, 2009, Plaintiff filed a Petition for Writ of Certiorari with the United States Supreme Court. (*Id.* ¶ 219.) The Supreme Court denied the Petition for Writ of Certiorari as untimely. (*Id.*) The ruling sent Plaintiff into a 10-year long battle with depression. (*Id.* ¶¶ 219-227.)

In 2018, Plaintiff reapplied for admission to the New York Bar. (*Id.* ¶¶ 230-236.) She reapplied not to practice law but hopefully to clear her name; she hoped New York would review all the evidence pertaining to her Florida disbarment and would view the Florida judgment of theft as a fabrication by The Florida Bar. (*Id.*) Needing to provide updated material to the New York Bar, Plaintiff requested a grievance letter from The Florida Bar. (*Id.*) Around March 27, 2018, Plaintiff received a grievance letter from The Florida Bar that was an exact match of the letter the Bar sent her in 2008. (*Id.*) The Bar reissued this letter ten years after it became aware that the

judgment of disbarment for theft against Plaintiff was fraudulently obtained and was the product of fabricated charges. (*Id.*) Plaintiff has learnt that most state bars, including New York, will honor and accept The Florida Bar's judgment of theft against her. (*Id.* ¶ 235.) In this suit, Plaintiff seeks $75,000 in compensatory and actual damages and $75,000 in punitive damages against The Florida Bar for defamation. (*Id*. ¶¶ 316-317.)

II. DISCUSSION

The Eleventh Amendment to the United State Constitution, as interpreted by the United States Supreme Court, prohibits federal courts from exercising subject matter jurisdiction in suits brought against a state by a citizen of that state or citizens of another state. *Welch v. Texas Dep't of Highways & Pub. Transp.*, 483 U.S. 468, 472 (1987). "The amendment applies even when a state is not named as a party of record, if for all practical purposes the action is against the state." *Schopler v. Bliss*, 903 F.2d 1373, 1378 (11th Cir. 1990) (citation omitted). Thus, as a department of the State of Florida, the Florida Supreme Court also has Eleventh Amendment immunity. *Uberoi v. Supreme Court of Fla*., 819 F.3d 1311, 1313-14 (11th Cir. 2016) (citing Fla. Const. art. V, § 1). The Florida Supreme Court has established The Florida Bar as "an official arm of the court." R. Regulating Fla. Bar, Intro. Therefore, as a state agency, The Florida Bar is also covered by the Eleventh Amendment, which deprives this Court of subject matter jurisdiction over this suit. *See Kaimowitz v. The Fla. Bar*, 996 F.2d 1151, 1155 (11th Cir. 1993) (noting well-settled law that the "[t]he Eleventh Amendment prohibits actions against state courts and state bars," and affirming district court order dismissing suit against The Florida Bar for lack of subject matter jurisdiction under the Eleventh Amendment).

Plaintiff acknowledges that The Florida Bar is a state agency but argues that "[t]he Florida Legislature has waived sovereign immunity from traditional tort suits to the extent set out in

Section 768.28, Florida Statutes." (Pl.'s Resp. at 12-13; *see also* Sec. Am. Compl. ¶¶ 42-43.) Plaintiff is wrong. Evidence that a state has waived sovereign immunity in its own courts is not by itself sufficient to establish waiver of Eleventh Amendment immunity from suit in federal court, and the Eleventh Circuit has held that section 768.28 does not waive Florida's Eleventh Amendment immunity. *Schopler*, 903 F.2d at 1379 (holding that the district court erred in interpreting section 768.28 as a statutory waiver of Eleventh Amendment immunity and, by extension, finding that the Florida Department of Professional Regulation and the Florida Board of Dentistry ("the Board") were entitled to absolute immunity from suit against these state agencies and individual Board members; the suit alleged that Board members made false and defamatory statements against the plaintiff). Here, The Florida Bar is entitled to Eleventh Amendment immunity. Accordingly, it is

ORDERED that:

1. Defendant, The Florida Bar's Motion to Dismiss Second Amended Complaint [DE 66] is **GRANTED** and this case is **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction.

2. All pending motions not otherwise ruled on are **DENIED AS MOOT**.

3. This case is **CLOSED**.

DONE AND ORDERED in Fort Lauderdale, Florida, this 19th day of August 2020.

RODNEY SMITH
UNITED STATES DISTRICT JUDGE