IN THE SUPREME COURT OF FLORIDA

CHARLES K. INGLIS,

Petitioner,

Case No. 61,530

v.

THE FLORIDA BAR,

Respondent.

_____/

# RESPONDENT'S ANSWER BRIEF

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## PRELIMINARY STATEMENT

Counsel will refer to pages in the record as they are sequenced. "R" plus the page of the record and "Petitioner's Brief" plus page, will be used consistently herein.

## TABLE OF AUTHORITIES

## STATEMENT OF THE CASE

Petitioner was suspended from the practice of law on February 12, 1964, for conversion of clients' funds. He was suspended for eighteen (18) months and until he made restitution in the amount of $10,930.58 plus interest accrued and demonstrated that he was rehabilitated. The Florida Bar v. Charles K. Inglis, 160 So.2d 701(Fla. 1964).

Petitioner filed a Petition for Reinstatement in about 1968. As a result of subsequent criminal charges brought against him, he withdrew his application with leave to reapply.

On December 28, 1981, petitioner again filed a petition for reinstatement. On August 25, 1983, the matter was heard before referee, the Honorable B. J. Driver.

On December 8, 1983, Judge Driver recommended that petitioner not be reinstated.

In January, 1984, the Board of Governors approved the referee's recommendation.

On January 27, 1984, petitioner filed a Petition for Review and on February 3, 1984, served The Florida Bar with Petitioner's Brief.

## STATEMENT OF THE FACTS

Petitioner was admitted to The Florida Bar in December, 1959. At the end of his first year of private practice, he represented John and William Myers in the sale of their respective interests in corporate stock. (R. 250) He secretly withheld and converted to his own use $17,597.25 of his clients' profits from the sale. Additionally, the Supreme Court held that he willfully made false statements to his clients.

As a result, on February 12, 1964, petitioner was suspended from the practice of law for a period of eighteen (18) months. Reinstatement was conditioned upon restitution of $10,930.58 to John and William Myers or written evidence that the matter had been settled. Additional conditions of reinstatement were that petitioner pay the costs of the disciplinary proceeding and demonstrate his rehabilitation, by clear and convincing evidence, at any subsequent reinstatement hearing. The Florida Bar v. Charles K. Inglis, 160 S0.2d 701(Fla. 1964).

In 1966, petitioner's real estate broker's license was suspended as a result of The Bar proceedings. The license was reinstated in 1968, and that year, petitioner filed a Petition for Reinstatement with The Florida Bar.

During these proceedings, petitioner paid John Myers his 54 percent share of the restitutionary amount. (R. 257)

Prior to this time, William Myers had died, leaving his estate to his wife and Constance Myers Moore, a daughter by a former marriage. (R. 256) Soon thereafter, the widow died, leaving her estate to her daughter, Pat Carter. (R. 259) Petitioner proposed to pay the balance of the restitution to Ms. Moore and Ms. Carter in extended payments, rather than a full cash payment. The heirs would accept extended payments only on condition that petitioner sign a note for the amount and waive a former release, making himself legally responsible for the balance due. Petitioner refused to do so. (R. 260)

Then, in December, 1970, during the reinstatement proceedings, petitioner was arrested for the shooting of a three-year old girl who lived in his neighborhood. Later, the Information was amended and he pled no lo contendre to the charge of culpable negligence. He was adjudicated guilty and was given two years probation. He then withdrew his pending Petition for Reinstatement. (R. 271)

Petitioner completed his two years probation, and in 1972, started his own real estate firm, The Real Estate

Center of Florida. Petitioner stated that he had been extremely active in this business since 1972. (R. 272) For the past twenty (20) years, petitioner has not been employed in any capacity in any law office or any law related business. (R. 266)

On December 28, 1981, petitioner filed a second Petition for Reinstatement, which is the subject of these proceedings.

On August 25, 1983, at a hearing before a referee, petitioner produced several witnesses to attest to his good character. However, numerous witnesses, some former business assosciates of petitioner, appeared on behalf of The Bar to testify to the contrary.

THE STUBBS CASE

Prior to his arrest for aggravated assault in the shooting of the child, Terri Stubbs, witnesses testified that the sheriff had been called on several occasions due to petitioner's alleged shooting of neighborhood animals. (R. 175) Mrs. Grace Laura Smith (formerly Mrs. Stubbs) testified that, at one point, petitioner threatened her with a pitchfork. (R. 182)

Petitioner offered no witnesses to refute this testimony.

THE BORROW PIT

Petitioner was co-owner in a borrow pit property with Harold Dale Morgan, W. R. Kirby and Nelson Thayer. When the property began to have a negative cash flow, the co-owners decided to put the borrow pit up for sale. (R. 117) Relying on petitioner's reputation and expertise as a real estate broker, Morgan, Kirby and Thayer agreed that petitioner would prepare the listing and offer the pit for sale with the Florida Real Estate Exchange. (R. 278) One year later, at an Exchange meeting, petitioner was contacted by a Miami broker with a potential buyer. (R. 279) Although petitioner informed the three co-owners that he

had a potential buyer, he failed to disclose the fact that the buyer was willing to pay $75,000 for the property. Rather, he asked them to assess what they thought the property was worth. (R. 279)

Additionally, he told them that the sellers insisted on a long-term management contract with petitioner before the sale would take place. (R. 280) Due to their experience with the negative cash flow on the property, coupled with their uncertainty as to the value of the property, Morgan, Kirby, and Thayer assessed their total interests in the property at $29,000, the balance owed the bank. (R. 192)

On May 3, 1978, petitioner bought out his co-owners for $29,000 and on the same date, sold the property to William T. Huddlestun, Incorporated, a Dade county corporation, for $75,000 minus $12,000 in broker's comission. (R. 47 and 283) Additionally, as a result of the sale, petitioner entered into a long-term management contract which provided him with twenty (20) percent of the net profits of the borrow pit for a period of five years. (R. 55 and 283)

Mr. Morgan stated that at no time prior to the sale of the property did petitioner disclose to his co-owners

his intention to immediately resell the property at a large profit. (R. 186) Petitioner argued that he had no duty to disclose that he was going to make thousands of dollars profit at his co-owners' expense. (Petitioner's Brief, 28)

FLAGG BROTHERS BUILDING

Petitioner was co-owner with Harold Dale Morgan, W. R. Kirby and Nelson Thayer in a piece of commercial real estate. (R. 186) The four co-owners entered into a lease with a purchase option. (R. 187) Later, petitioner refused to agree with the others as to uncertain terms in the purchase agreement. Eventually, the lessees brought suit to enforce their option to purchase, which necessitated agreement on the part of the four co-owners. (R. 187) On the day of the closing, before he would sign the necessary papers, petitioner presented Mr. Harold Morgan with a self-styled recommendation for petitioner's reinstatement into The Florida Bar, for his signature. Mr. Morgan refused to sign the recommendation. (R. 189)

THE SALE OF THE BROOKSVILLE FORD DEALERSHIP

Petitioner acted as broker in the sale of a Ford dealership and real estate owned by William C. Lowry and

Harold Tucker. (R. 200) Petitioner found a prospective buyer for the business. The agreement consisted of two five-year leases with an option to purchase. (R. 201) Petitioner agreed to waive his commission on the lease for the second five years in order to facilitate the sale. He also agreed to sign an estoppel letter to that effect. (R. 201) However, despite his assurances, petitioner failed to sign the letter, and later, sued for the commission. (R. 202)

Mr. Lowry and Mr. Tucker reported petitioner to the Real Estate Commission. (R. 202)

## ISSUE

DOES THE RECORD IN THIS CAUSE REFLECT THAT PETITIONER SHOULD BE REINSTATED AS A MEMBER OF THE FLORIDA BAR?

The essential requirement of reinstatement is that the burden is on the petitioner to prove that he is entitled to resume the privilege of the practice of law. In Re Dawson, 131 So.2d 472(Fla. 1961). The basic elements of proof of fitness to practice, used as a general guideline by the courts in reinstatement cases are:

1. Strict compliance with the specific conditions of the disciplinary order, such as payment of costs;

2. Evidence of unimpeachable character and moral standing in the community;

3. Clear evidence of good reputation for professional ability;

4. Evidence of a lack of malice and ill feeling by the petitioner toward those who by duty were compelled to bring about the disciplinary proceedings;

5. Personal assurances, support corroborating evidence, revealing a sense of repentance, as well as a desire and intention of the petitioner, to conduct himself in an exemplary fashion in the future;

6. Restitution in cases involving misappropriation of funds;

7. Petitioner must prove that he has conducted himself personally and in the life of his community to justify a conclusion that:

a. he has repented of his misdoings;
b. the disciplinary order has impressed him with vital importance of the ethical conduct in the practice of law; and
c. he is morally equipped to resume a position of honor and trust among the ethical practitioners at The Bar. In re Dawson, 131 So.2d 472(Fla. 1961); In re Timson, 301 So.2d 448 (Fla. 1974).

Petitioner has not sustained his burden of proof establishing his fitness to practice law by the above standards. His failure to make full restitution until almost twenty years following the initial order, his involvement in criminal charges resulting from a shooting incident in

1970, and complaints of business associates stemming from his real estate dealings in recent years, readily indicate that petitioner has not met the minimum essential elements to prove his fitness to practice law.

The original disciplinary order of February 12, 1964, conditioned petitioner's reinstatement upon payment of full restitution or the exhibit of other written evidence that the matter has been concluded satisfactorily. The Florida Bar v. Inglis, 160 So.2d 701(Fla. 1964). The amount owed John and William Myers was $10,930.58 plus interest accrued from 1961.

Petitioner did not attempt to make restitution until the pendency of his first Petition for Reinstatement in 1968. He then made full restitution to John Myers and unsuccessfully attempted to negotiate extended payments with the heirs of William Myers for the balance owed their estate. When the 1970 criminal charges were brought against petitioner, he withdrew his Petition for Reinstatement. (R. 271) From that date, until just prior to the present proceedings, there is no indication that petitioner made any attempt to complete payment of his restitution. Despite several successful years in the real estate business, petitioner did not again attempt restitution and eventually lost track of the heirs. He

did not attempt to locate them them until after he filed the present Petition for Reinstatement in December, 1981. (R. 32) Now, twenty years after the original order, petitioner makes a second bid for reinstatement. The last restitutionary payment was made on September 23, 1983, almost one month following the final hearing on his reinstatement. (R. 58)

Although petitioner returned a portion of the restitution in 1969, he failed to repay almost one-half of the amount to William Myers and/or his estate for nineteen years. During the last eight years of this period, petitioner's business averaged two to three million dollars in real estate transactions yearly. (R. 273)

It appears that petitioner's recent motivation to reimburse his former client springs from the same self-serving behavior that resulted in petitioner's original suspension, as well as present complaints as to his business dealings in the recent past.

In In re Dawson, the court defined restitution as symbolic of repentance, honesty and a desire to do the right thing under the circumstances. (Dawson, p. 474) Petitioner's conduct neither complies with the spirit of restitution of the original disciplinary order, nor demonstrates a genuine sense of repentance or remorse.

Additionally, petitioner has failed to produce clear and convincing evidence of unimpeachable character and moral standing in the community. Although petitioner produced witnesses to testify as to his good character, other witnesses appeared with contrary testimony. As for petitioner's moral standing in the community, The Bar produced Mr. Elbert Stubbs who stated that petitioner was accused of shooting animals in the neighborhood, and as a result, the sheriff was called on several occasions. (R. 175) Mrs. Grace Laura Smith, the former Mrs. Stubbs, when asked about her prior relationship with petitioner, stated that following an argument about petitioner's alleged shooting of neighborhood animals, ". . . he (Mr. Inglis) started toward me with a pitchfork. He was shaking so badly, like he always did when we had words. He would state shaking and jerking. . ." (R. 182)

Furthermore, former business associates testified that petitioner lacked honesty in his business dealings. Mr. Harold Dale Morgan, a general contractor, stated that he had known petitioner for approximately ten years. During most of those ten years, he and petitioner had been involved as joint owners in property. (R. 198) Over the ten-year period, Mr. Morgan stated that he had extensive business dealings with petitioner. (R. 199) However,

when asked if he would recommend that petitioner be reinstated into The Florida Bar, he responded that he would not. (R. 198)

Mr. Morgan first began to distrust petitioner as a result of petitioner's business dealings in the sale of two separate properties, co-owned by Mr. Morgan, petitioner and two other individuals. Petitioner held himself out to be not only a broker but a specialist in real estate investment.

Q Now, you started your own firm, I believe you said, in 1972?

A Yes, sir.

Q What business is that firm engaged in? What name is it?

A It's called Real Estate Center of Florida.

Q And what is the nature of its business?

A It is a -- it is the trade name of a registered real estate broker and also a realtor, because I am a founder and a continuing member of the Land O'Lakes Board of Realtors which is North Tampa. That is a business involved in the -- in the marketing and sale and counseling of real estate and investment real estate, primarily the exchanging of real estate worldwide.

Q Now, since 1972, have you been actively engaged in that business?

A Oh, extremely active. I am known throughout the United States and the world as a specialist is real estate investments and real estate exchanging. (R. 272)

Petitioner argues that his self-dealing in the borrow

pit incident was legally and morally correct as he was a co-owner, and as such, had no special or fiduciary duty to the others. Therefore, he argues, he was well within his rights to reap large profits at their expense.

A fiduciary or confidential relation is described as follows:

> One founded on trust or confidence reposed by one person in the integrity and fidelity of another . . . An expression including both technical fiduciary relations and those informal relations which exist whenever one man trusts and relies upon another. It exists where there is special confidence reposed in one who in equity and good conscience is bound to act in good faith and with due regard to interests of of one reposing the confidence. A relation subsisting between two persons in regard to a business, contract, or piece of property, or in regard to the general business or estate of one of them, of such a character that each must repose trust and confidence in the other and must exercise a corresponding degree of fairness and good faith. Out of such a relation, the law raises the rule that neither party may exert influence or pressure upon the other, take selfish advantage of his trust, or deal with the subject-matter of the trust, in such a way as to benefit himself or prejudice the other except in the exercise of the utmost good faith and with the full knowledge and consent of that other, business shrewdness, hard bargaining, and astuteness to take advantage of the forgetfulness or negligence of another being totally prohibited as between persons standing in such a relation to each other. . .
>
> Black's Law Dictionary 564 (rev.5th ed.1979)

When the co-owners decided to sell the borrow pit, they requested that petitioner, handle the solicitation of the sale of the property, relying on his expertise as a broker. Petitioner stated that the four co-owners purchased the property in 1973, with a mortgage of $75,000, "when the world was going straight up and everything was wonderful . . (R. 276) However, during the later recession, the three co-owners began to rely on petitioner's expertise in handling the property. (R. 276 and 277) Petitioner stated:

A . . . But when the oil embargo hit in '74 and when we had several big projects at the same time, they all had a negative cash flow. And those men (Morgan, Thayer, and Kirby) had never gone through a recession and didn't know the things you have got to do when things gt tough and when you built up an inventory of negative cash flow with your credit and reputation at stake . . . We have to come out of this and save our reputation, even though we have recession. So I went out and determined the feasibility.

Q Determined the feasibility is what?

A The feasibility of selling the dirt off the ground and selling it . . . and I personally went out and went through all the environmental permitting and got a permit for a borrow pit. (R. 276 and 277)

Later, when the group decided to sell:

A. They came in to see me one day and said, "Let's get rid of the borrow pit. We have reduced the mortgage down to $24,000. We can't afford the payment each month. We are broke. Let's sell the borrow pit."

I said, "all right, but I will start the solicitation of sales to see if we can do it." (R. 277)

But I said, "You have got to undertand and consent that I have got to do this out in the creative market."

And I said, "You have got to consent that we are going to pay somebody else a ten percent commission."

And we went through the whole thing. And so, I prepared the listing, which we use at State level in the Florida Real Estate Exchange orders, offering the pit for sale as an owner along with the other owners. (R. 278)

"A fiduciary relationship exists when there is a reposing of faith, confidence and trust, and the placing of reliance by one upon the judgment and advice of the other." Williams v. Griffin, 192 N.W.2d 283, 285.

The above conditions clearly establish petitioner's fiduciary obligation to his fellow co-owners. His expertise in real estate dealings, his statements attesting to the naivety of his fellow investors during recessionary times, and his ultimate betrayal of their trust with his blatant self-dealing in the sale of the property, is a clear indication of a breach of fiduciary duty on his part. Furthermore, in the face of this conduct, it would be an almost unsurmountable burden for petitioner to show unimpeachable character and moral standing in the community, an essential requirement of reinstatement.

Petitioner also argues, that due to his short legal career, he had no opportunity to establish clear evidence

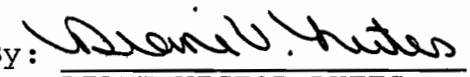
of a good reputation for professional ability. Ironically, it could be argued that the same short period afforded him time to establish a bad reputation for the same, as evidenced by his suspension from the practice of law.

Furthermore, when petitioner asked why he had waited twenty years to reapply to The Bar, he pointed to his original petition and subsequent criminal conviction, and then stated, "I have been so engrossed in my real estate problems, keeping my credit good, that I haven't had the time." (R. 162) Petitioner also testified that he had not been involved in law related employment or law related business for the past twenty years. (R. 266)

## CONCLUSION

It is The Florida Bar's position that petitioner has failed to carry the burden of proving, by clear and convincing evidence, that he is fit to resume the practice of law. He had failed to meet the basic elements of proof essential to demonstration of rehabilitation. His twenty-year failure to complete restitution, despite more than adequate means, his self-dealing in real estate matters at the expense of long term business associates, and his adjudication in the shooting of the Stubbs child, glaringly point to his failure to meet the standards of reinstatement designed to emphasize the protection of the public and the image and integrity of The Florida Bar as a whole. Petition of Wolf, 257 So.2d 547(Fla. 1972).

The Bar, therefore, respectfully requests this court to deny the Petition for Review and uphold the referee's recommendation.

By: 

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Richard T. Earle, Jr., counsel for petitioner, at his record Bar address, 447 Third Avenue North, Suite 410, Post Office Box 416, St. Petersburg, Florida 33731, and to John T. Berry, Staff Counsel, The Florida Bar, Tallahassee, Florida 32301 and to John F. Harkness, Jr., Executive Director, The Florida Bar, Tallahassee, Florida 32301, by regular U. S. Mail, on this 21st day of February, 1984.

Diane Victor Lutes

DIANE VICTOR LUTES