

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,
Petitioner,

CASE No. 66,722
(TFB No. 13B83H28)

v.

PAUL T. MARKS,
Respondent.

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FLORIDA SUPREME COURT
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PETITIONER'S REPLY BRIEF

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ARGUMENT A

The respondent argues that the referee's findings of fact and recommendation should not be accepted by this Court due to delay in prosecuting the instant case. However, respondent's arguments as to delay have previously been made and heard before the referee. See Motion to Dismiss, Response to Motion to Dismiss, and Order Denying Motion to Dismiss made a part of this record by the referee.

ARGUMENT B

Respondent next argues that the referee placed undue weight on the felony no contest plea entered into by the respondent. Respondent attempts to discredit the no contest plea by asserting that no factual basis exists for the plea. Mr. Alfonso, attorney for respondent in the criminal proceeding was questioned by the referee as follows:

COURT: "But it is unquestionably correct, am I not, [sic] that the trial judge in accepting your plea of no contest did make a finding on the record that there was a factual basis for the plea and the charge?" (P. 195 T.)

MR. ALFONSO: "I feel confident that he did. I don't have a specific recollection right now. There may have been a stipulation that there was a factual basis for the charge." (P. 195 T.)

To further remove himself from his felony no contest plea, respondent on page eight (8) of his Brief stated that "respondent did not practice in the criminal law area and in a sense was in a worse position than an layman." However, respondent was

represented not by just one lawyer, but by two lawyers in his criminal proceedings. (P. 190, 191, T.)

ARGUMENT C

Respondent infers that Jerry Green was presented at the "eleventh hour to bolster The Florida Bar's case" (Page 20 of Respondent's Brief). However, in reality, respondent requested production of documents and tangible evidence on July 2, 1985, and The Florida Bar responded on August 5, 1985 and provided the name of Jerry Green as a potential witness. Respondent was on notice four (4) months before the December 19, 1985 hearing that Jerry Green was a potential witness.

The respondent then portrays a picture of Jerry Green as self-serving and not corroborative of Mr. Haya. However, a complete review of Mr. Green's testimony at the hearing from P. 136 T. to P. 168 T. reflects that several meetings took place wherein the conspiracy to import marijuana was discussed. Mr. Green placed the respondent at those meetings and indicated that the drug scheme was discussed. Further, Mr. Green's testimony is significant as it reinforces and corroborates Mr. Haya's testimony concerning respondent's involvement in the drug transaction.

The testimony and exhibits presented at the hearing before the referee illustrate that respondent is guilty of the violations of the Code of Professional Responsibility found by the referee. Given the nature of the evidence and the transaction, disbarment is the only appropriate sanction for such conduct.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Petitioner's Reply Brief has been furnished by regular U.S. Mail to GERALD W. NELSON, Counsel for Respondent, Paul T. Marks, One Urban Center, Suite 750, 4830 West Kennedy Boulevard, Tampa, Florida 33609; and a copy to John T. Berry, Staff Counsel, The Florida Bar, Tallahassee, Florida 32301-8226 this 21st day of May, 1986.



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