IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. 67-262
TFB CASE NO. 01-81N15

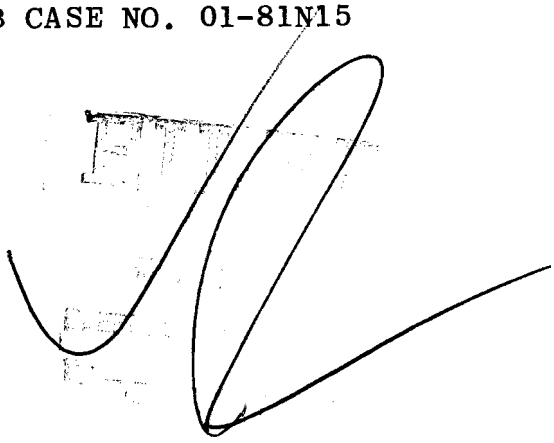
THE FLORIDA BAR

Petitioner

vs:

JUSTIN J. LIPMAN

Respondent



BRIEF OF RESPONDENT
(Corrected and Revised)

TABLE OF CONTENTS

CITATIONS OF AUTHORITY

STATEMENT OF THE FACTS

The facts,as stated herein,are those facts which are not controverted on either side.

The respondent is a member of the Florida Bar. He was admitted to practice in November,1958 and practiced continuously until October,1981 when,for reasons hereinafter set forth,he was suspended from practice until December,1984. Respondent has been in practice continuously since that date. Prior to the present incident,the prior record of the respondent consisted of a private reprimand in 1978.(Case No. 01-78015)

On or about the second week of April,1978,the respondent and one Kenneth Massoud entered into an agreement to form a printing company.The nature of the printing enterprise is in conflict.The respondent claims that the nature of the printing enterprise was legititimate.The Florida Bar claims that it was set up for an illegal purpose-counterfeiting.

In any event, a gesetner printing press was obtained and said Kenneth Massoud took the press,together with supplies, and set up business in Orlando.On May 8,1978,Massoud was arrested for counterfeiting United States Currency by the United States Secret Service.He was later tried and convicted for counterfeiting in the United States District Court for the Middle District of Florida,Orlando Division.(Case No. 78-132M-02-CR). Massoud was sentenced to a term of five years in prison(later reduced to three years).At that time,respondent was not indicted nor has he ever been charged at the Federal level.

Sometime in November,1979,Jerry Allred,Assistant State Attorney for the 1st Judicial Circuit of Florida, visited Massoud at FCI in Tallahassee and obtained a statement from Massoud which statement implicated the respondent.In June,1980,the respondent was indicted by a state Grand Jury(RA-1009). A trial was held in February,1981 and the respondent was convicted.Prior to sentencing,the trial judge resigned from the bench and a new judge was appointed. On September 4,1981,the respondent was adjudicated guilty and sentenced to a term of five years in prison(RA-1431). Appeal was filed and on March 13,1983, the 1st DCA did reverse and remand the sentence and conviction and called for a new trial(See Lipman vs State,428 So2d 733-Item 4 Complainant's list of exhibits).

In November,1983,as a result of a plea bargain, the respondent entered a plea of Nolo Contendre to the misdemeanor of conspiracy and was adjudicated and sentenced to serve a term of six months in the County jail.

Other facts will be set forth in the argument.

STATEMENT OF THE CASE

In 1981, as a result of a complaint filed by Jerry Allred,the Florida Bar audited the trust account of the respondent.As a result of that audit and conviction of respondent of counterfeiting,charges were filed against the respondent,and the grievance committee for the First Judicial Circuit held hearings in August and September,1981. Jerry Allred presented the case for the bar.

Subsequent to the 1st hearing(August,1981) but prior to the second hearing(September 25,1981),the respondent was adjudicated guilty in Circuit Court and on September 14,1981,the Supreme Court issued an order suspending respondent from practice,effective October,1981.

The grievance committee voted probable cause. Although a request was made by Leo Thomas,attorney for respondent,to the bar not to proceed because of the automatic suspension of respondent,the bar,through Laura Keene,refused and indicated that they were going to proceed with disbarment proceedings.In March,1982,Laura Keene was appointed staff counsel for the Florida Bar(see respondent's exhibit "GP") However,the bar did not take any further action at that time.

In March,1983,the conviction of the respondent was reversed.(See Lipman vs State cited above).At that time,respondent could have petitioned the Court for reinstatement but,as he was under the impression that the bar would not seek more than a three year suspension,he,therefore,did nothing.

As stated before,respondent was sentenced to six months in the County jail and was released in May,1984.

In October,1984,the respondent filed a Motion to Terminate Suspension which motion was objected to by the Florida Bar.In December,1984,the Supreme Court granted the Motion of the respondent and respondent returned to practice.The order setting aside the suspension allowed the bar to proceed.The bar, however,did not file anything for several months.

In July,1985,the bar filed a formal complaint. Answer was filed as well as motions to preserve confidentiality and to dismiss.Both motions were denied by the referee at a hearing in Panama City,which hearing was not reported.The hearing took place in September,1985.Requests for Admission were filed by the bar and answered by the respondent.The respondent filed Interrogatories which were not answered completely by bar counsel until about two weeks before the hearing.

Prior to the hearing,respondent filed a Motion for Continuance which Motion was denied without hearing.

With regard to the trust account violations,the audits were not furnished respondent until about two weeks before the hearing and the auditor for the Florida Bar,Clark Pearson, did not meet with respondent until the day before the hearing. (See "HT"-32)

At the hearing on January 30,1986,respondent renewed his Motion to Dismiss and Motion for a Continuance.Both Motions were denied(HT 4,5)

Hearing was held on January 30,1986 and Report of the referee was issued subsequent thereto.

POINTS TO BE RAISED ON ARGUMENT

1. The Referee erred in failing to grant the Motion to Dismiss filed by the Respondent.

2.The Referee erred in failing to grant the Motion for Continuance filed by the Respondent.

3.The Findings of Fact by the Referee with regard to Count 1 are in error.

4.The Findings of Fact by the Referee with regard to Count 2 are in error.

5.The Recommendations of the Referee as to Guilt are in error.

6.The Recommendations of the Referee as to Disciplinary Measures are in error.

ARGUMENT

POINT 1

THE REFEREE ERRED IN FAILING TO GRANT THE MOTION TO DISMISS FILED BY THE RESPONDENT

It is recognized that this Court has held that,for all practical purposes, a statute of limitations does not exist in proceedings such as these.However,it is felt and hoped that the Court will take another look at that holding.The taking of one's livlihood is the same as taking one's property without due process if there is no statute of limitations. Some sort of limitation is necessary.

The matters giving rise to this action occured in 1978. In 1980.the respondent was indicted and in 1981 was convicted. The bar presented evidence before a grievance committee in August and September,1981 and then,after voting probable cause, did not take any further action until July,1985.During the almost four years that ensued from the time probable cause was voted and the bar took action,the main witness,Kenneth Massoud,died. The referee's statement in his recommendations as to disciplinary measures that,"Respondent originated the very idea and enticed an individual trying successfully to complete a felony probation to revert to his former criminal ways to do the 'dirty work'",might not have been made if the referee had seen Massoud in person.(Emphasis supplied).The referee,obviously, did not read the testimony of George Phillips(RA 1410-1413)

Further,because of the passage of time,people's memories have a tendency to fade.For example (HT 153) agent Stebbins testi-

fied that Sherry Smith(who had worked with Massoud in printing the counterfeit money and testified against him at his trial) had told him(Stebbins) about a drug deal that was going to take place in North Florida. (Lines 1-5-HT 153) and on page 140(HT) testified that Sherry Smith had told him that the money was comming up to Pensacola. Yet on page 165(HT) after I read him portions of his previous deposition,he had to retract those statements.

Rule 11.04(6)(b) states as follows:

> FINDINGS OF PROBABLE CAUSE:If a grievance committee finds probable cause,the staff counsel assigned to the committee shall promptly prepare a record of its investigation and a formal complaint and file same with the executive director-----
> (emphasis supplied)

The rule then goes on to state that all proceedings shall be "prompt."

What good is a rule if it has no meaning?

I recognize that the bar will argue that since I was suspended already,"prompt" action was not necessary.If that be the case, why did Laura Keene tell Leo Thomas that the bar was going to proceed even after I had been suspended by the Supreme Court.

It is recognized by all,including the bar,that I could have applied for reinstatement after the opinion of the 1st DCA since,at that time,I was no longer a convicted felon.

However,I did not do so.Apparently,I relied on the good faith of the bar just as I had relied on the good faith of Kenneth Massoud.

In conclusion,it is felt that,in this particular instance, a statute of limitations or estoppel should apply.The facts were available to the bar in 1981.It was not a case where it took several years to gather all the facts. All the witnesses were available in 1981.Further,in 1981,I might have been able to have representation in any bar proceeding.

See Fla Bar vs. Papy,358 So2d 4,Fla Bar vs Randolph, 238 So2d 635.

POINT 2

THE REFEREE ERRED IN FAILING TO GRANT THE

MOTION FOR CONTINUANCE FILED BY THE RESPONDENT

The respondent made a Motion for Continuance prior to the hearing and alleged as grounds that he had just obtained the funds to hire an attorney but said attorney could not take the case on such short notice.The motion was denied without hearing.It was again denied at the hearing(See HT-pp 4-5)

As should be obvious,I needed an attorney at that hearing.Perhaps an attorney would have done a better job in presenting the facts. An example should suffice.

Towards the end of the hearing(which went from 10 AM until 7 PM with an hour break for lunch) I was asked why the name "JD", who was obviously a suspect,failed to come up at trial(HT 238). I went on to explain how I found out about this individual(HT 239-241).I then stated(beg. line 21-p 241 HT):

> "Why it was not brought out at the trial,I don't know.Because I had mentioned it to Leo, and the only reason it wasn't brought out,the only thing I can think of,is because of the fact that the trial was so voluminous,and I guess you don't remember everything, and it wasn't brought out. And believe me,I wish it had been.I think it might have cleared up quite a few things."

If Leo Thomas had been there,he would have remembered why it was not brought out.I am not attempting to change what I said at the hearing.The reason why it was not brought out at the trial is obvious from an examination of the record on appeal. At the trial,we were limited to testimony of facts that occured prior to the date of Massoud's arrest.At the trial,I would have

had to testify that I found out about "J.D." or Jerry Dillon after May 8,1978.Stebbins had been asked about him at his deposition but was not asked at the trial.

Another example of where a lack of an attorney on my part caused an error to be committed(See HT p 42). I indicated that I would have Ms. Greenlaw,my secretary,testify as to trust procedures.Her explanation would have been helpful.Yet when I put her on the stand,I only asked her about suit fees and the rest of the questions were about Massoud.(HT beg. P 130). As can be seen, two heads would have been better than one. After all,both Mr. and Ms. Bateman appeared for the bar.

The question could be asked why I do not have an attorney at this juncture.The answer is the same reason I did not have one at the hearing.The rules provide that a Petition for Review be filed within 30 days from the date of mailing of the report of the referee.(See Integration Rule 11.09(3).It would have been virtually impossible for an attorney to absorb all of the materials and file a brief within 30 days.

My motion also stated other reasons for a continuance. These reasons need not be quoted here as the motion itself is self-explanatory. I feel that those reasons were valid.

The referee appeared to be more interested in adhering to a time table than whether or not my rights were being affected. After all,if he refused to dismiss the complaint even though the same was not filed "promptly,"he should have given me,at least,the benefit of the doubt.I fail to see how a sixty day continuance could have done any damage to the bar.

In failing to allow me a continuance,the referee,in effect,denied me my constitutional right of due process.

In conclusion,I feel that the referee erred in not allowing a sixty day extension,especially considering the report of the referee.

POINT 3

THE FINDINGS OF FACT BY THE REFEREE WITH REGARD TO COUNT 1 ARE IN ERROR

The findings of fact by the referee appear to be virtually a recitation of the Florida Bar's Complaint and Request for Admissions.Virtually all of the findings are based solely on the testimony of Kenneth Massoud-virtually all of which were denied by respondent.It was almost as if I did not even testify.Further,and it is quite evident from a reading of that testimony of the record on appeal which was not lost,Massoud lied and was inconsistent in his testimony.It is inconceivable to myself how the referee can state so smugly that the evidence is "clear and convincing." It is apparent that the referee did not read Lipman vs State,428 So2d 733.

It is obvious,from a reading of the trial record,that I was convicted because of an overzealous prosecutor who was interested solely in a conviction and was not interested in the truth.With the possible exception of Clarice Wilson(involving one incident),there is not one piece of corroborating evidence that I was guilty of anything except bad business judgment.

At the hearing,I attempted to point out to the referee some of the inconsistencies in Massoud's testimony("HT" beg. p 187). Apparently this all fell on deaf ears.

The following consists of a discussion as to each finding that is objected to.

2.The referee states that prior to April,1978,I telephoned Massoud in Orlando.Then the referee states that I admitted

this in my answer.Query-when did I admit this? An examination of my answer to the complaint and answer to Request for Admissions do not reflect any such admission.Now it is true and the telephone records certainly support the fact that I called Massoud "sometime prior to April,1978."But it must be remembered that my own testimony(and even Massoud's testimony)indicated that Massoud and I had other business dealings.Therefore,I could have been calling Massoud about other unrelated matters. But-no-this is not what the referee means as the first sentence of the finding of fact has to be taken in conjunction with the second statement that I had a "good deal" which would make the both of us rich.That statement was,of course,denied by me.The only evidence in support of that finding is the testimony of Massoud and I have consistently denied same. How is this "clear and convincing?" The referee cites Massoud's testimony but fails to cite my testimony(RA 367 et seq) wherein I relate how the printing business came about.

3 & 4.Again,the referee takes the testimony of Massoud as the Gospel and does not cite any of my testimony.Further the state's exhibits cited by the referee show that there were numerous phone calls BOTH ways.Further,as my testimony points out,the sequence of events is wrong and it is for that reason that I have objected to Finding of Fact 3.If one assumes that each Finding of Fact represents a chronological sequence of events,then it would appear that Massoud flew to Pensacola,(Finding of Fact 3), then we discussed counterfeiting(4),Massoud rejected the proposal, and flew back to Orlando.Then I called him several times a day;then I offered him additional monies(5) and then he agreed to join(6).

In my own testimony,this was refuted.On page 367 RA,I stated that I was in Ken's(Massoud) house when he brought up the possibility of entering into the printing business.(See also deposition of Siham Massoud-Respondent's exhibit 7-which was ignored by the referee).I then stated that Ken came up to Pensacola two or three days before the machines were rented and we again discussed the printing business(RA 367-370). On April 13,while Massoud was in Pensacola,the machines were rented and he drove back to Orlando.(Note: In a re-reading of this testimony,I was mistaken in admitting in my Answer that Massoud flew to Pensacola.-he did not fly-he drove-another reason why I needed an attorney.)In any event,the only testimony is that of Massoud.How is this "clear and convincing."

5 & 6. These are discussed,in part, above.On page 371 RA, I testified as to how much money I provided Massoud with at the beginning and (RA-372)the amount of money given to him from inception to date of arrest exclusive of the credit card and exclusive of payments on the machine(see also HT-227). There was money given to or for Massoud after his arrest,but these findings of fact indicate that the money was promised for the "scheme."Further,even the total amount actually given for Massoud does not approach the amounts used by the referee.(See also discussion of No. 10-Finding of fact-below.)

Finding of Fact 7 is not objected to.

8.The referee states that I paid the deposit on the machine which is admitted.He then states that "by the terms of the lease,the machine was to be located at(my office address in Pensacola) except for a few weeks--in Orlando."While this is technically

correct,the implication-that I knew that it was going to be a short term operation ,is clearly wrong.(See Answer to complaint no 6,Answer to Request for Admission,no "L",HT-pp 197-198,RA,p588, RA p 380. See also RA 500-502. See HT 221,222.)

The testimony cited above clearly shows that when the machines were leased,Pensacola Office Equipment knew that they were going to Orlando but that they had to put in the wording because of their warranty because the machine was going out of their service area(See RA 343.)I testified that when the machines were purchased, I had a discussion with Mr. Cobb,the president of Pensacola Office Equipment Company about the wording in the lease. I informed him that if we could not take the equipment to Orlando, to forget about it.(He did not want it to go there at all.)We compromised on the "wording" so the bank,which was financing the lease, would be satisfied.He and I both knew that the machines were going to be in Orlando a lot longer then a few weeks and that they would probably be down there permanently.Unfortunately,Mr. Cobb was deceased at the time of the trial.But there was nothing underhanded about it.Massoud testified(p 96 RA)that he was only going to have use of the machine for 15 days.This is clearly false as the cited testimony shows.The implication that this was going to be a short term operation is simply not true.

Finding of Fact 9 is admitted.

10.I admitted that Massoud did print counterfeit money but it was done without my knowledge(See Answer to Complaint-8,Answer to Request for Admission-N.)As to the amount of money given to Massoud,I have discussed this,in part, above in discussion of Finding of Facts 5 & 6.I stated at the trial(RA-372) that I had

given Massoud between $3,500 and $4,000 prior to the date of his arrest.On p. 227 HT,in reading portions of the grievance committee hearing,I stated that the amount was $4,020.Now it is admitted that money was given to Massoud after his arrest. But I fail to see the relevancy of that.It certainly was not the amount testified to by Massoud.I wonder if the referee considered Mr. Thomas' cross examination of Massoud on this very point(See pp 206-213 RA).The testimony shows that at an earlier deposition,Massoud testified that I had given him as much as $15,000 to $20,000(see 212 RA).Again-how is the evidence "clear and convincing?"It may be confusing but it is hardly convincing.

Further the referee states as fact that I told Massoud that the money was being provided by the "big boys up North."It is true that Massoud testified to this statement. But is that convincing?Consider the following:First of all, Massoud testified that he made a trip to Orlando to see a so-called "Dominic."This is discussed more fully below.But since when is West Palm Beach north of Orlando. Secondly,and more important(see p 160 RA-Massoud testimony and P 495 RA-Lipman testimony)there is testimony concerning a $10,000 check sent to me by sprint to be used in obtaining a loan.Would that not be somewhat inconsistent with my telling Massoud that I was dealing with the "big boys up north?"This is especially true when the tenor of the referee's finding seems to indicate that I told this to Massoud after he was in business.

Again,I fail to see how this is "clear and convincing" evidence.

11.The evidence shows that Massoud was at or near West Palm Beach on February 9,1978.Massoud testified (RA 92-95) that he went to West Palm to meet this "Dominic" for the purpose of finding out about paper and to get "more money"(RA p 94 lines 12-21).He stated that he made a collect phone call to me.It is interesting to note that Allred never asked Massoud the date he was down there.(He mentions it when he questioned me about the call on page 481 RA).The clear implication that he made to the jury was that this occured AFTER he agreed to go into business and AFTER he was already in business.After all why would he go to West Palm Beach to discuss what type of paper to use.But the date is interesting. It is unfortunate that neither Leo or I caught this at the trial.It does tend to show the deceptive practices of Jerry Allred.The date is interesting because the ONE phone call(not "several" as the referee states) was made in February which was prior to the time when the "scheme" was even supposedly discussed and two months before the machine was even rented. Further,if,as the referee states,Massoud flew to Pensacola to discuss the scheme and,at first,rejected it,why would he be going to West Palm Beach in February to discuss the paper and to get "more money"(line 18,p 94 RA) from one of the backers.

Allred questioned me about the phone call(see p 481 RA) and I explained same. Further on pages 384-385 RA,I testified as to the reason for the phone call and stated that I did not even know who Dominic was.

On pages 206-210,I pointed out to the referee that Massoud was obviously lying since he had not mentioned it to Leo in his earlier deposition.

In this instance,the finding is not only not supported by clear and convincing evidence,it is not even correct.

12.The only testimony as to so-called "discussions" of counterfeiting was the testimony of Massoud.Neither Garrett or Wilson in their testimony before the Grand Jury could corroborate this. On pages 504-505 RA,I testified that we left one time so that Ken could meet another woman.In fact on page 505 RA,Allred admits that he knew who the girl was.(line 10)

With regard to the testimony of Clarice Wilson,on page 177(HT) I questioned agent Stebbins about his interview with Ms. Wilson wherin she denies any involvement on my part.If one reads the entire Grand Jury testimony of Clarice Wilson,it becomes obvious that she was continuously badgered by Jerry Allred and frightened to the point where she took a polygraph test.My guess is that she wrote out the statement cited by the referee in order to placate Jerry.The statement was,in effect, under duress.Her knowledge of what I was supposed to have told her is quite unclear.Further,when Judge Mitchell ,the trial judge,read the grand jury testimony,he excluded her as a witness(RA 1337.) It is also unfortunate that the testimony that Ms. Wilson gave out of the presence of the jury,was testimony which was lost.More discussion on this point below.

13.On pages 215-216 HT,I attempted to explain what might have been said to Clarice Wilson(See also p 217 HT.)I stated what I thought might have happened.I indicated to the court (215) that I was not too certain.

Upon reflection,it must be remembered that between the time the machine was leased (April 13,1978) until the time Massoud

was arrested (May 8,1978) was a period of 25 days.Further the grand jury testimony was on March 8,1980 or nearly two years after Massoud was arrested.As Clarice herself testified, many things were said about counterfeiting after Massoud's arrest-but not before.Clarice had a hard time remembering the alleged phone call to Sharon Garrett.It is possible that dates and calls could have been mixed up.The only thing that I can say is what I said at the hearing and that was a guess.

It should also be pointed out that Sharon was the girl friend of Massoud.(RA p 245) (See also RA 213)

14. Again,this is Massoud's testimony.On page 382 RA, I testified that Massoud "may" have made one trip to Pensacola. See also p.386 RA.I also stated in my Answer to Request for Admission(no."O")that the first time I saw copies of any counterfeit money was at the trial.It should be noted that Allred never questioned me on cross examination about these alleged trips.Again,the evidence is not clear and convincing.

15.The referee cites Massoud's testimony but fails to cite Leo Thomas' cross examination of Massoud on this very point(see pp 233-245 RA).On page 239 the suitcase containing the counterfeit money was left in my car when I dropped him off at the motel. On page 240,Leo reminded Ken about an earlier statement that he had given to Bill Ferguson,under oath,that he dumped the money out in my car behind the railroad off 110. Further,Ken did not remember whether he checked the suitcase in at the airport or carried it on board.Further,the suitcase became a hanging bag.(See pp 307-310 RA)

(See also RA p 241,lines 1-3). It strikes me as somewhat peculiar that a person carrying close to one million dollars in counterfeit money would not remember whether or not he checked it in at the airport or carried it on board.

I also pointed out at the hearing(HT 199) about some other inconsistencies.One of the biggest-he never brought this so-called suitcase to the trial.He did testify(p309 RA) that he still had the suitcase but wasn't asked to bring it up.This strikes me as somewhat odd.Why would he not bring up his suitcase-after all,he had previously testified that he had been an informant(p 189 RA).I also feel certain that if Ken had brought up money to me in a hanging bag,Jerry Allred would have certainly introduced that bag into evidence.

Again,I hardly consider the evidence to be "clear and convincing."

Findings of Fact 16-20 are admitted.I would point out that with regard to No. 20,I was not sentenced by the trial judge-either at the time I received the five year sentence or at the time I received the six month sentence.

I mention this because it appears that the referee never commented on the numerous inconsistencies that appear in Massoud's testimony.It is hoped that on oral argument,I might be able to comment on some more.

It is interesting to note that the referee did not find that I had made a trip to Orlando after the operation got started. After all,Ken testified that I did make such a trip(p 116-117 RA) Of course,on page 462 (RA) this was refuted and,in fact,even Allred had to admit that possibly his star witness may have lied on this point(RA 517-522, 533,lines 18-19,535,line 12.)

The referee never mentions the testimony of Barry Beroset who represented Massoud during his counterfeit trial.On page 221 RA, line 9,Massoud in answer to Leo's question as to when he allegedly told Beroset that I was involved,he states:

> A.I told Barry Beroset the first time when I hired him as my lawyer.

See also pp 147-148 RA where he states about the same thing to Jerry Allred. Of course,Mr. Beroset denies this.(See Beroset's testimony beginning p. 116 HT)Beroset's testimony was lost but see Stipulation no. 6(RA pp 1451-1452)

The referee also failed to consider two exhibits introduced by me,namely items 2 and 3.

Item 2 consists of a deposition of Ken Massoud which was taken in connection with the second trial.The deposition was taken over the phone.Massoud was very reluctant to give any information and stated that AFTER the trial,I sent someone to his house to threaten him and that the police report(item 3) would verify this.In the first place it makes very little sense that I would send someone to threaten him after the trial and in the second place,the police report does not,in any way implicate me.

The referee failed to consider the deposition of Siham Massoud.This deposition tends to show what Massoud's feelings were for me and it also bears out when the printing enterprise was first discussed.It also bears out why I believed that the possibility of a contract with the Holliday Inn existed.

The referee never commented on the fact that Ken had his sentence reduced by testifying against me.

It is also interesting to note that there were two additional charges brought against me in the original indictment.Both of these

charges were dismissed by the trial court.The charges(that I aided and abetted Massoud to flee from the trial and tried to help him break out of prison-all of which Massoud testified to)were so idiotic that even the Florida Bar did not pursue them.The referee never considered this in determining the veracity of Massoud.All he could say was that I "enticed" this individual (See item 5,Report of Referee)

In conclusion,I fail to understand why the referee failed to comment on any of my testimony.I do not intend to go into here.But,at least,it was and is consistent.My testimony,whether it was before the trial court,grievance committee or hearing before the referee was consistent.It never varied.I believed that the business was going to be ligitimate.I believed that we would make money from the business.I believed that it would not take a large investment.Perhaps I was wrong in helping Massoud after his arrest-but does that make me guilty of knowledge of what he was doing before.

It is true that I was found guilty by a jury.But I believe that,at least,part of the reason I was found guilty was because of the actions of Jerry Allred which are also commented on by the 1st DCA. (See RA 470-471,beg line 19).

It is my opinion that the Findings of Fact,as pointed out above, as to Count 1, are in error.

POINT 4

THE FINDINGS OF FACT BY THE REFEREE WITH REGARD TO COUNT 2 ARE IN ERROR

In the beginning,the alleged trust violations were considered to be minor and very little time was spent on attempting to defend same before the grievance committee.Jerry Allred felt that an examination of my trust account was necessary for the presentation of his case and therefore,got the Florida Bar involved.There were no complaints filed against me by any affected parties.The bar,itself considered the violations minor in nature and it is believed that if the trust violations stood by themself,there would there probably would not have been a hearing.At the grievance hearing, the violations were not covered with any degree of completeness and certain violations were admitted by me.At that time,I was not informed of any so-called shortages and even at the time the bar finally filed the complaint in July,1985,I was not accused of shortages.

Prior to the hearing in January,1986,I was contacted by Ms. Bateman,co-counsel as to whether or not I would stipulate to the admission of certain documents of which the two audits were a part. This contact was made about two weeks prior to the hearing.I informed Ms. Bateman that I could not agree to anything until I saw the scheduals. It should be noted that the 1st audit was the only one used at the grievance hearing.The second one was not completed until after that hearing. When I received the scheduals,I attempted to review them but they made absolutely no sense.It was also around this time that I was informed of the shortages.Finally,one day before

hearing,I met with Clark Pearson,auditor for the Florida Bar, and we went over the schedules.At that time I was informed that according to Mr. Lansgaard(the one who did the audits) that the term "SF" meant "Sheriff Service Fees.(See HT p 32).I informed Mr. Pearson that the term "SF" meant "suit fees" and that these were fees that I was entitled to.This was also testified to by Ms. Greenlaw(HT-p 133)Both Mr. Pearson and Mr. Lansgaard testified at the hearing because we could not stipulate to any testimony or the audits.

Without going into the specific findings of fact,it must be remembered that from 1966 until 1981,I was in a collection type practice.I collected and disbursed thousands upon thousands of dollars.Reconciliations were done for each client on the inside cover of each file(See page two of final audit).As I stated to Mr. Lansgaard,there were thousands of files involved.As I stated at the hearing, it is impossible to examine these accounts in a vacuum.You cannot just say that I was "short" or I did not disburse when I was supposed to.As I explained at the hearing, deposits are made several times during the month.How can one make remittences at the end of any particular month when deposits are made several times during the month.It is interesting to note that at the end of the period there were no shortages(see p. 84 HT).

I do not deny that violations did occur.I admit them and apologize for them.Those violations are as follows:(1) I deposited commissions(which are fees) directly into the trust account.(2)I allowed fees to accumulate in the trust account and did not withdraw them when I was supposed to. (3) there were checks written out of sequence and this may be a violation.The withdrawals were not keyed to a particular client.(4) It is claimed that I did not reconcile my trust account according to bar procedures and(5) I did

not keep a seperate cash receipt and disbursement journal.

With regard to the last two violations,I stated that reconciliations were made for each client on the cover of each file and I testified that I did reconcile my bank account. As far as a cash receipt and disbursement journal is concerned, the deposit slips show clearly that every item of cash taken in was identified on the deposit slip.Receipts were given persons who paid cash but no cash was disbursed-everything was done by check.

For the reasons given above,I would object to finding of facts 33 and 34 in that they cannot be borne out by the testimony and cannot be taken in a vacuum.

As stated before,I did write checks out of sequence which were not related to a particular account.This was in error but it represented fees which had been allowed to accumulate.

I might add that I introduced a check at the hearing which was also written out of sequence(see pp 247-249 HT).This check was not included in the bar's complaint.I introduced the check to show that it was written about a year before the Massoud incident and,therefore,the writing of the checks about the time of the Massoud incident should not be construed as anything sinister.(p. 248 HT.)

I would also admit that I would pay costs out of the trust account even when the money received from clients would not cover it and then bill client.When the same was received,it would go back into the trust account.(I was not charged with this in the complaint.)This I recognize was wrong but(1) I knew that I had fees in the account which would cover same and(2) this is common practice in commercial type practice.

As stated before,I was in the collection practice for 15 years and handled thousand upon thousands of dollars.Not a single complaint has ever been lodged against me.I feel that the remarks by the referee in his recommendations as to disciplinary measures that I am unfit to be entrusted with the monies of others is very unfair.

I would object to finding of fact 35 for the reasons given above and because I had never been charged with same prior to the hearing and did not find out about it until shortly before the hearing.

I admit that deposits were made from the old trust accounts (finding of facts 21-24.)The old accounts would have explained where the money originally came from.Inadvertenly these records were not furnished to the auditor.It is impossible to comment on them now except to say that the audit does not state that they were refused him.He should have come back and asked for them prior to his audit.

POINT 5

THE RECOMMENDATIONS OF THE REFEREE AS TO GUILT ARE IN ERROR

COUNT 1

I would be the first to admit that I should not have gone into business with Ken Massoud.Aside from what I lost on the venture,I have paid out thousands of dollars in legal fees and I was suspended from practice for three years.In addition I spent four months in the county work camp,my reputation in the community has suffered greatly as the trial was duly reported by the press. Further,for the past year,it has been impossible to make any plans because of this pending matter. So I have plenty of reason to realize that I made a mistake.I also realize that there are suspicious circumstances. But this is certainly not "clear and convincining" evidence of guilt.It may be clear and convincing evidence of poor business judgment but the fact that I am a lawyer does not automatically make me a smart business man.

As I stated at the hearing,Ken had been my friend for some years prior to this incident.Further,he had never cheated me before. If I was going to start a counterfeiting operation,I believe that I would have picked a better name then the L & M Corporation which stood for Lipman and Massoud(RA 373 lines 1 & 2).

I recognize that I should not have given Ken money after his arrest.Why this was done can be speculated on but it is not evidence of guilt.The best that can be said for the evidence is that it amounts to a "swearing match" between Massoud and myself.As for the type of individual Massoud was,I would refer the Court to the testimony of George Phillips(Pp 1411-1413 RA), the testimony of Barry

Beroset(HT 116-130)See also Stipulation # 6,RA 1451.,the testimony of Rose Greenlaw(HT 130-134 and 4th stipulation RA 1447)

At all times my testimony has been consistent and, at all times I have stated that I am not guilty of complicity to counterfeiting.I did not set Massoud up in business for the purpose of printing money.

I am not guilty of violation of the Florida Bar Code of Professional Responsibility cited by the referee in that I did not engage in conduct involving moral turpitude.I did not engage in conduct involving dishonesty,fraud,deceit and deception.At the time I entered into the agreement with Massoud,I was not aware that what I was doing would adversely affect my fitness to practice law.As I stated at the trial,I felt that I was going into business for very little amount of initial cash(See pp 368-371 RA)

Allred made a big deal over the fact that certain procedures such as sales tax number and license and filing the articles was not done.But it must be remembered,the business only lasted 25 days.

COUNT 2

As I stated before,I am guilty of certain violations such as comingling.It does not appear that I am guilty of 11.02(4)(b). I may be guilty of 11.02(4)(c). I do not believe that I am guilty of 9-102(A) and 9-102(B)(3). I do not believe that I am guilty of EC 9-5.

POINT 6

THE REFEREE ERRED AS TO HIS RECOMMENDATIONS OF DISCIPLINARY MEASURES

It is my understanding that the hearing which took place on January 30,1986 usually has two parts.The first part covers the taking of testimony and if there is a finding of guilt then a second hearing relative to recommendations as to disciplinary measures is then held.In this case,there were not two hearings.Therefore,I did not argue as to discipline.

I cannot understand the recommendations of the referee. He states:

> "When his co-conspirator was apprehended,respondent refused to acknowledge his own guilt and has never expressed any remorse to this day."(emphasis supplied)

I would ask-are we living in Russia or pre-war Germany? Am I supposed to acknowledge something that I do not feel guilty of? I suppose that if I came into the hearing acknowledging my guilt and saying that I was sorry then,perhaps,the referee might have found differntly. Did he expect me to say that I lied before the trial Court and the grievance committee? Did he expect me to say that I committed perjury? Did he expect me to sign a confession like they do in the Soviet Union? Is it to be assumed that because the bar makes charges against a person,they are supposed to lie down and say, " Yes I am guilty and I am sorry.?" I am sorry for many things,as I have pointed out. But I am not going to "admit" something that I am not guilty of.

The other statements of the referee,("the evidence is clear and convincing") belies the facts.As stated earlier,the evidence may be confusing but not convincing.It may be true that I used

poor business judgment but is poor business judgment grounds for disbarment.The very idea that I"enticed" Ken Massoud is ridiculous. How does one "oversee" a business operation when it only lasted 25 days. As I stated earlier,I never saw the operation.

The referee's statement that I am unfit to be entrusted with the monies of others is totally unfair.Does the fact that I handled thousands upon thousands of dollars without a single complaint make me untrustworthy?

As stated earlier, I was suspended from practice in October,1981. My conviction was set aside in March,1983. I could have petitioned the Court for re-instatement then.I did not. I waited until October,1984 before filing the motion.I was out of practice for 38 months. In fact I was declared indigent for the second trial.

With regard to the costs,I feel that I should only be responsible with those costs incurred with the trust violations.

SUMMARY OF ARGUMENT

POINT 1

THE REFEREE ERRED IN FAILING TO GRANT THE MOTION TO DISMISS FILED BY THE RESPONDENT

The Florida Bar indicated that they were going to file after the grievance hearing in August and September,1981,even though the respondent had been suspended by the Supreme Court. The bar failed to act.The respondent was suspended until December, 1984 when respondent was readmitted following the filing of a Motion for reinstatement.The bar objected to the motion.The bar did not file until seven months after December.The bar violated Rule 11.04(6)(b) even though said rule states that action will be taken "promptly" after grievance committee votes probable cause. The main witness has since died.The referee could not witness his demeanor. The constitutional rights of respondent were violated by not dismissing the complaint.

POINT 2.

THE REFEREE ERRED IN FAILING TO GRANT THE MOTION FOR CONTINUANCE FILED BY THE RESPONDENT

The failure of the referee to grant a continuance amounted to a lack of due process since errors were committed at the hearing which might have not been committed if the respondent had an attorney. The referee appeared to be more interested in time tables rather then justice.

POINT 3

THE FINDINGS OF FACT BY THE REFEREE WITH REGARD TO COUNT 1 ARE IN ERROR.

The referee appeared to accept the testimony of Kenneth Massoud as the Gospel and ignored the testimony of the respondent.

The respondent objected to several Findings of Fact because they were either based solely on the testimony of Ken Massoud or were just plain wrong. The testimony of Massoud is inconsistent. Further the evidence is not "clear and convincing."

Finding of Fact 2 is based only on Massoud's testimony.

Finding of Fact 3 and 4 is based on Massoud"s testimony which was refusted by respondent.The referee failed to consider any of the testimony of the respondent.Further,the deposition of Siham Massoud tends to prove the testimony of the respondent.

Finding of Fact 5 & 6 are not true

Finding of Fact 8,while technically true creates the impression that the operation was going to be a short one as the machines were only going to be in Orlando for a short period of time. This was not so as the evidence shows.

Finding of Fact 10. While it is admitted that respondent did give money to Massoud.The amount of money given to him prior to his arrest does not approach that cited by the referee.Again it is based on Massoud's testimony.

Finding of Fact 11.The telephone records show that Massoud called respondent from a pay phone in West Palm Beach on February 9,1978 one time(not "Several").This was prior to the time when Massoud was supposed to hav agreed to the "scheme." According to Massoud,he was supposed to have met a man by the name of "Dominic," who was going to show him what type of paper to use and give him more money.He never met the man.This is false.

Finding of Fact 12.There was no corroboration of any discussions of counterfeit money by any of the other persons.The statement of Clarice Wilson,when read together with her grand jury testimony,is unclear.A reading of her testimony shows that

her testimony was coerced by an overzealous prosecutor.Her testimony was excluded by the trial judge.

Finding of Fact 13.I attempted to explain at the hearing what I thought might have happened.Because of the short period of time between the date the machines were rented and the date of Massoud's arrest and the fact that the grand jury hearing was almost two years later,dates could have been mixed up.

Finding of Fact 14. This is based on Massoud's testimony alone which was denied by respondent.

Finding of Fact 15.Again this is based solely on Massoud's testimony which is contradictory.Massoud did not even remember whether he took the bag on board or checked it in at the airport.Further,the bag was not introduced into evidence even though Massoud testified that he still had it.

Other testimony tending to show the fact that Massoud lied is the testimony that respondent was supposed to have made a trip to Orlando while the business was still operating;that Massoud lied when he testified that he told Barry Beroset about respondent's involvement.The referee never took into consideration the deposition of Massoud in connection with the second trial and the deposition of Siham Massoud,his wife.The bar never prosecuted respondent on the other two charges in the indictment which were later dismissed which indicates that the bar thought he was lying.

The testimony of respondent was always consistent. Respondent was found guilty,in part, because of the actions of the prosecutor.

POINT 4

THE FINDINGS OF FACT BY THE REFEREE WITH REGARD TO POINT 2 ARE IN ERROR

Respondent admits that he did violate certain trust procedures by depositing direct commissions(fees) directly into the trust account,allowing fees to accumulate in the trust account, writing checks out of sequence and writing checks for costs over the amount received from client.

Respondent had reconciliations on the file of each client. Respondent did not keep a cash recipt of disbursement journal but, the deposit slips clearly show where each item of cash came from and all disbursements were by check.

Respondent was never charged with shortages in the complaint and did not find out about them until shortly before the hearing.Because of the volume of business that transpired,it was impossible to write all checks at the end of the month.

The audit was incorrect in that it referred to "SF" as "sheriff service fees" rather then "suit fees" which belonged to respondent.There was no shortages at the end of the audit period.

Respondent made admissions which he had not been charged with such as introducing a check written a year before the Massoud incident.

There was never a complaint filed by any client against respondent during the entire 15 years he practiced commercial law.

POINT 5

THE RECOMMENDATIONS OF THE REFEREE AS TO GUILT ARE IN ERROR

The evidence against the respondent is not "clear and convincing". Virtually all of it is based on the testimony of one person whose veracity is questionable.The referee failed to consider any of the testimony offered by the respondent.

Respondent's testimony,whether at the trial,grievance committee or referee hearing,was always consistent.

Respondent admits that he should never gone into busness with Massoud or helped him after his arrest.

Respondent denies his guilt as to Count 1.

Respondent admits guilt as to Count 2 but he does not feel that he is guilty of what he was charged with in all areas.

POINT 6

THE REFEREE ERRED AS TO THE RECOMMENDATIONS OF DISCIPLINARY MEASURES

The referee took the position that because I did not admit my guilt(which to him was "clear and convincing)that I showed no indication of rehabilitation and therefore should be disbared.

Respondent does not feel that he should admit something that is not true.The evidence may show poor business judgment but this is not grounds for disbarment.

The referee's statements with regard to the trust account are unfair considering the fact that over the 15 years in commercial practice,not a single complaint was made.

Respondent was suspended from practice in 1981 and could have petitioned the Court for reinstatement in March,1983. He chose to wait until October 1984 before filing a petition.

Respondent feels that he should only be responsible for costs incurred with the audit.

CONCLUSION

This brief is longwinded and covers much ground.It does not cover everything as that would take a book.There are many areas which could not be covered because of the time frame.

One area which was not covered in detail was my testimoney at the trial which is quite long(RA 361-513).I would ask that the Court please read carefully all of the testimony and record on appeal.I recognize that it is quite voluminous.I think that from a reading,the Court will determine that the only evidence against me is the testimony of Kenneth Massoud and that his veracity is questionable,to say the least.

It is to be noted that the bar apparently did not believe all of his testimony as they did not file against me for the other two counts of the indictment.It is also to be noted that Mr.Bateman in his closing argument before the referee never alluded to Massoud's veracity.

I believe that Massoud was in partnership with someone else and that this "someone else" was Jerry Dillon.I believe that he and Massoud planned the entire operation and that I was a "dupe". I believe that the Secret Service conducted a slip shod investigation as should be evident from the testimony of Stebbins.He did not even know who Dillon was. However,his superior knew who Dillon was(HT 143-144).

I feel that the referee was unfair in his determinations. He refused to dismiss the case,refused to grant a continuance and has failed to take into consideration any of my testimony.He appeared to be more interested in timetables then justice

In conclusion,it is hoped that this Court will take into consideration the fact that I have practiced law for a total of almost 25 years with a virtual clean record.I have admitted to trust violations that I was not even charged with. I do not know anything but the law. I have served a three year suspension.Have I not suffered enough? Can I finally get on with my life?

I apologize to this Court for errors which occur in this brief. I have typed it myself and I am not a typist.I hope that the Court will accept this revised and corrected brief.

WHEREFORE Respondent requests that this Court will modify and set aside the report of the referee dated April 11,1986.

Respectfully Submitted

JUSTIN J. LIPMAN
P.O.Box 15229
Pensacola,Fla. 32514
(904) 474-1240

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A true and correct copy of the foregoing revised and corrected brief was mailed to THOMAS H. BATEMAN,111,Attorney for the Florida Bar,3722 Lifford Circle, Tallahassee,Florida 32308,on this the 19th day of May,1986.