9-11

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

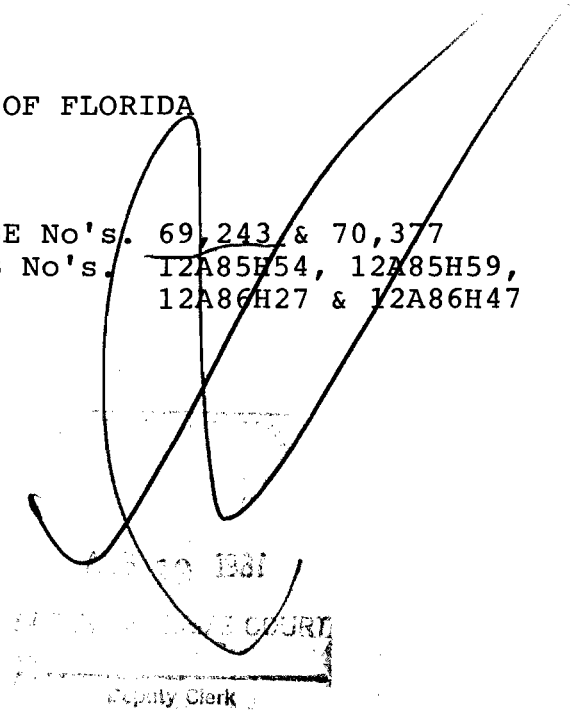
v.

GREGORY HARTMAN,

Respondent.

_____/

CASE No's. 69,243 & 70,377
TFB No's. 12A85H54, 12A85H59,
12A86H27 & 12A86H47



THE FLORIDA BAR'S INITIAL BRIEF

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TFB 12A85H54
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From February 26, 1982 to November 16, 1984, respondent was under contract with the Department of Health and Rehabilitative Services (hereinafter HRS) to provide legal representation in child support enforcement cases. (Answer to complaint, (paragraph 2 (AC 2)). Pursuant to that contract, respondent represented Joanna Wyatt in her efforts to collect delinquent child support payments from her husband, John Wyatt (AC 3). On July 31, 1984, respondent received $2,500.00 from John Wyatt as a payment for child support arrearage (AC 5). Respondent failed to deposit the $2,500.00 in his trust account, did not pay the money to Joanna Wyatt, and did not notify her that the money had been received (AC 7,8).

Pursuant to the contract with HRS, respondent also provided representation in paternity actions (AC 9). In many of the paternity cases handled by the respondent, putative fathers paid the costs for human leucocyte antigen (HLA) blood tests to the respondent to be placed in trust pending the outcome of the tests (AC 10,11). Respondent did not place all of the monies advanced to him for blood tests into escrow, nor did he disburse those monies as payment for HLA tests or forward those funds to HRS (AC 12,13).

Respondent's contract with HRS ended on November 16, 1984 (AC 15). On February 19, 1985, respondent mailed funds relating

to HRS clients' escrow accounts to HRS' new contract attorney (AC 16). Although records indicated that respondent had collected $4,131.00 on behalf of HRS clients, only $550.00 was forwarded to the new attorney (AC 17). Respondent could not account for the remainder of the trust funds (AC 17).

Respondent's trust accounts were audited for the period of March 1, 1979 through April 1, 1985 (AC 18). The audit disclosed that the respondent failed to promptly deliver to clients approximately $9,703.91 in client funds which they were entitled to receive (AC 19).

The respondent failed to fully produce ledger cards or similar client records subpoenaed by the Bar (AC 20). In addition, respondent failed to maintain a cash receipts and disbursement journal for all receipts and disbursements of trust funds and did not maintain quarterly trust account balance reconciliations through June 30, 1984, or monthly reconciliations after June 30, 1984 (AC 21,22).

TFB NO. 12A85H59
CASE NO. 69,243

The respondent was retained to assist Norman Lloyd Darby as personal representative for Mr. Darby's father's estate (AC 25). On May 18, 1983, the respondent drafted an FHA-VA purchase sale agreement related to the aforesaid estate (AC 27). On September 30, 1983, respondent appeared at the closing of the subject property on behalf of Mr. Darby (AC 31). On the closing date, the respondent received proceeds of approximately $7,000.00,

after payment of all costs, fees, title insurance and loan balances (AC 32). The $7,000.00 was placed in his trust account. The respondent subsequently failed to disburse the $7,000.00 to Mr. Darby (AC 34). The respondent has admitted that this constituted conversion of his client's funds, (AC 39), although he did not admit the conversion was to his own use (TR 13,19-21).

TFB NO. 12A86H27
CASE NO. 69,243

In December, 1984, the respondent was retained by David Dickason to handle the satisfaction of certain debts incurred by Mr. Dickason (AC 42). On December 14, 1984, the respondent was given $3,543.00 in cash towards satisfaction of said debts (AC 43). Mr. Dickason was especially concerned about paying on checks which had been issued by him and then returned for insufficient funds, a fact which he made known to the respondent (AC 44). Out of those monies given to him, respondent retained $491.83, failing to return that money to Mr. Dickason (AC 47). Respondent failed to comply with requests by Mr. Dickason and his attorney for an accounting of his funds (AC 48,50). As of May 21, 1986, the respondent had not returned the $491.83 rightfully due his client (AC 51), allegedly because he was contesting the amount owed (TR 15,5-25).

TFB NO. 12A86H47
CASE NO. 70,377

In or about August, 1984, the respondent was asked by Carlo Celeste, a long time friend and client, to assist in obtaining a

loan (AC 2). The respondent contacted Louis Bifano, another friend and client (AC 5). Mr. Bifano agreed to loan Mr. Celeste $10,000.00 for six months at an interest rate of 80% (AC 8). The respondent drafted a note and mortgage on Mr. Celeste's condominium, which was to be security for the mortgage (AC 10). Mr. Hartman admitted that he knew that the 80% interest rate provided for in the note and mortgage was illegal (TR 23,23-24). Respondent then drafted and signed the note and mortgage as attorney in fact for Mr. Celeste (AC 11). On August 27, 1984, Mr. Bifano delivered $10,000.00 in cash to respondent, which respondent turned over to Mr. Celeste. Respondent then delivered the note and mortgage to Mr. Bifano (AC 12). At no time did respondent inform Mr. Bifano that the interest provided for in the note was unenforceable because it was usurious (AC 13). On May 10, 1985, Mr. Celeste defaulted on the loan and filed bankruptcy, naming Mr. Bifano as a creditor (AC 15). Respondent at no time advised either Mr. Celeste or Mr. Bifano that charging $4,000.00 interest on a $10,000.00 six month loan was usurious and constituted a commission of third degree felony, which could result in criminal penalties (AC 17). Additionally, respondent did not inform Mr. Celeste or Mr. Bifano of the possible conflict of interest which he had in this matter due to his representation of both individuals, who were clients or former clients, in the transaction (AC 20).

STATEMENT OF THE CASE

On May 5, 1987 final hearing was held before the Honorable Morton Hanlon, Referee. Judge Hanlon found respondent guilty of the following violations:

CASE NO. 69,243
(TFB No. 12A85H54, 12A85H59 and 12A86H27)

Count I-Rule 11.02(4)(b) (Failure to maintain required records or to produce them upon proper direction); Bylaws Section 11.02(4)(c) (Lack of a separate cash receipts and disbursements journal; Failure to produce ledger cards or similar records for all receipts or disbursements of trust funds; Lack of required trust account balance reconciliations); DR 9-102(A) (Failure to deposit all funds of clients paid to a lawyer or law firm in one or more identifiable bank account); DR 9-102(B) (Failure to promptly notify clients of receipt of their funds, to maintain complete records of properties of a client coming into the possession of the lawyer and render appropriate accounts to the client regarding them, to promptly deliver to the client at the client's request money which the client is entitled to receive).

Count II-Rule 11.02(4)(b) (Failure to maintain required records or to produce them upon proper direction); DR 6-101(A)(3) (Neglect of a legal matter); DR 9-102(A) (Commingling) and DR 9-102(B) (Failure to preserve the identity of funds of a client, to notify client of receipt of funds, to maintain

complete records of clients' funds, and to promptly pay to a client the funds which the client is entitled to receive).

Count III-Rule 11.02(4) (Failure to comply with trust fund requirements); DR 9-102(A) (Commingling) and, DR 9-102(B) (Failure to preserve the identity of funds of a client, notify the client of receipt of funds, maintain complete records of clients' funds and promptly pay to the client the funds to which the client is entitled) (Report of Referee (R) III).

TFB NO. 12A86H47
CASE NO. 70,377

Respondent was found guilty of violating DR 1-102(A)(6) (Conduct adversely reflecting on his fitness to practice); DR 7-101(A)(3) (Prejudicing or damaging a client in the course of a professional relationship); and DR 7-102(A)(8) (Knowingly engaging in illegal conduct or conduct contrary to a disciplinary rule) (R III).

The Florida Bar recommended that the respondent be disbarred (TR 43,18-19). The Referee recommended that the respondent receive a one-year suspension and a two-year supervised probationary period to run concurrently with the suspension, with the respondent being required to perform his rehabilitation contract with the Florida Lawyers Assistance, Inc. (R IV).

The petitioner in this Petition for Review is The Florida Bar and the respondent is Gregory S. Hartman. In this opening

brief, each party will be referred to as they appeared before the referee. Record references in this opening brief are to portions of the trial transcript, exhibits, and pleadings as they appear in the record. The Bar petitions this court for review of the referee's recommendation of discipline.

SUMMARY OF ARGUMENT

Respondent was responsible for the conversion of several thousand dollars. This money included sums given to him as payment for child support arrears, HLA blood test money, and proceeds from the closing of a real estate contact. In addition, respondent assisted two clients in arranging a loan at an interest rate which respondent knew was illegal.

The referee's recommendation of a one year suspension with a two year period of probation during which respondent must participate in the Florida Lawyer's Assistance, Inc. program, is an insufficient penalty for multiple acts of conversion of client trust funds, plus respondent's knowingly assisting clients in the commission of an illegal act.

Substance abuse, particularly when the use itself is a crime, should not be considered mitigating in a case of conversion coupled with assisting clients with breaking the law.

In this Petition for Review, The Florida Bar asks that the referee's recommendation of a one year suspension coupled with probation be disapproved, and that respondent be disbarred from the practice of law, plus that he be ordered to pay the costs of this action.

ARGUMENT

A one-year suspension coupled with probation is an insufficient sanction for conversion of client trust funds and knowingly assisting clients in engaging in illegal conduct.

It is undisputed that respondent failed to deposit at least $9,500.00 of trust monies into his trust account (AC 7,8,12,13), and that he has been unable to account for at least $3,580.00 in trust monies (AC 17). He has converted child support money (AC 7,8), HLA blood test money (AC 12,13), and $7,000.00 from a real estate closing (AC 19). The respondent has not repaid the full amount misappropriated.

Though some of the misuse of client trust monies may be due to bookkeeping errors, not all of the conversion can be accounted for in this manner since some monies were never placed into trust. A problem much more severe than poor bookkeeping is suggested by the respondent's prolonged resistance to providing an accounting (AC 48,50).

An overall picture of the respondent as an attorney who understands neither his responsibility as a fiduciary for his clients nor his need to uphold high ethical standards is strengthened by his knowing participation with two clients in arranging an illegal, usurious loan with an interest rate of 80% (TR 23,24). The participation in the loan was extensive, including the drafting and signing of a note and mortgage as attorney in fact for one of the clients, receiving cash from one client and delivering it to the other, and then delivering the

usurious note and associated mortgage (AC 2,5,8,10,12). A distain for not only rules governing The Florida Bar, but laws applying to society in general is further shown by respondent's use of illegal drugs (TR 36,12-14).

Substance abuse should not be considered sufficient mitigation to warrant not disbarring an attorney who has engaged in conversion of trust funds and facilitation of illegal conduct by his clients. Respondent's participation in creating a program for attorneys experiencing substance abuse is admirable, and should be considered when respondent seeks to reenter the Bar.

Given the facts of the instance case, a one year suspension is insufficient. The Florida Bar v. Harris, 400 So.2d 1220 (Fla. 1981) is instructive. In Harris, the respondent collected a $5,000.00 settlement, $3,000.00 of which was due his client. However, he failed to pay $2,000.00 of that amount to the client until after a grievance committee hearing was held. There was no evidence that any of the money was paid into or out of his trust account. In addition, the respondent failed to place $3,045.00 due to another client into a trust account or the registry of the court, but instead used the funds for his personal benefit. In yet another case, he received $27,427.00 due to a client as her portion of an estate. Although he opened a trust account and deposited the funds therein, he later converted the monies to his own use. This money was used by the respondent without the permission of his client. Respondent also failed to maintain trust accounts in keeping with requirements of The Florida Bar,

commingled trust funds with his own personal funds, and overdrew the trust account on 51 occasions.

In Harris, the Court noted that the respondent had engaged in a continuing and irresponsible pattern of conversion of client trust funds to his own use, failure to account for clients' trust funds and failure to maintain trust records. His attitude was found to be wholly inconsistent with the high standards of the profession, and the Court disapproved the referee's recommendation of suspension. The respondent was disbarred. The Court pointed out its pronouncement in The Florida Bar v. Breed, 378 So.2d 783 (Fla. 1979) that they would not be reluctant to disbar an attorney for commingling, misuse and misappropriation of client funds.

In the instant case, the respondent failed to deposit trust monies into his trust accounts, failed to account for several thousand dollars in trust monies, and has not yet fully repaid converted monies. In addition, he assisted two clients in arranging an illegal, usurious loan, and has used illegal drugs. The misconduct of the respondent demonstrates a pervasive pattern of disrespect for the rights of clients, rules of the Bar and the laws governing society.

In The Florida Bar v. Bond, 460 So.2d 375 (Fla. 1984), the respondent was ordered to pay $15,000.00 he held in trust to a claimant. However, the respondent was unable to be located, and failed to pay the money as ordered by the court.

In a second incident, the respondent was given $10,000.00 to

hold in escrow. After the Court ordered the money be released from escrow, it took the depositor numerous calls to get a check for that amount from the attorney. The check was later returned "account closed", and although the respondent promised that he would make the check good, he failed to do so. The respondent was "short" in his trust account, and had commingled trust account monies with other clients' monies and with his own money. Respondent failed to account for or to return the $10,000.00. The Supreme Court approved the referee's recommendation of disbarment.

In the instant case the respondent initially was uncooperative when a client, and later when the client's attorney, attempted to get an accounting of escrow monies. His cooperation came after Bar proceedings were initiated. His violations include failure to deposit escrow monies into his trust account and to account for large sums of trust monies. Even at the time of the final hearing before the referee, he had not yet repaid two clients for trust monies which had been converted, and he has never totally accounted for converted escrow funds.

Nevertheless, the Court found that while the respondent's

by a fellow attorney, and was instrumental in organizing an alcoholics anonymous type support group for attorneys in his local area. Further, he pointed out that the respondent had made restitution in one case and was taking steps to make restitution in the others. The referee recommended suspension in light of the decision in The Florida Bar v. Breed, 378 So.2d 783 (Fla.1979).

The respondent in Breed had used funds in an escrow account in an attempt to cover a shortage in his personal account which had resulted from a check kiting scheme. An audit found that the escrow account deficit was $40,406.00. It was determined that Breed had converted clients' funds to his personal use. In addition, the records kept by Breed were inadequate and client's funds had not been segregated.

In Breed, the referee recommended disbarment. The respondent successfully argued for suspension, stressing that disbarment was inconsistent with past disciplinary opinions of The Florida Supreme Court. He pointed out that no one had suffered any loss by his conduct and disbarment should not occur under those circumstances.

Although the Court recommended only a two-year suspension with proof of rehabilitation before readmission, they clearly gave notice to the legal profession of Florida that henceforth they would not be reluctant to disbar an attorney for this type of offense even though no client is injured. The Supreme Court noted that misuse of clients' funds is one of the most serious

offenses a lawyer can commit.

Reluctance to disbar is certainly not warranted in the instant case. Respondent was responsible for the conversion of trust money given to him as payment for child support arrears, HLA blood test money, and proceeds from the closing of a real estate contract. In addition, respondent assisted two clients in arranging a loan at an interest rate which respondent knew was illegal. A one-year suspension, with a two year period of probation, is an insufficient penalty for multiple acts of conversion of client trust funds, plus respondent's knowingly assisting clients in the commission of an illegal act. Substance abuse, particularly when the use itself is a crime, should not be considered mitigating in a case of conversion coupled with assisting clients with breaking the law.

WHEREFORE, The Florida Bar asks that the referee's recommendation of a one-year suspension coupled with probation be disapproved, and that respondent be disbarred from the practice of law, plus that he be ordered to pay the costs of this action.