IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR, Complainant,	The Florida Bar File No.: 11K87M83
v.	
STEVEN M. GREENBERG, Respondent.	Supreme Court Case No.: 69,987

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS: Pursuant to the undersigned being duly appointed as Referee for the Supreme Court of Florida to conduct disciplinary proceedings as provided for by Rule 3-7.5 of the Rules Regulating The Florida Bar (article XI, Rule 11.06 of the Integration Rule of the Florida Bar), a Final Hearing was held in the offices of The Florida Bar, on June 26, 1987. All of the pleadings, transcripts, notices, motions, orders and exhibits are forwarded with this report and the foregoing constitutes the record of the case.

The following attorneys acted as counsel for the parties:

For The Florida Bar: Randi Klayman Lazarus
Suite 211 Rivergate Plaza
444 Brickell Avenue
Miami, Florida 33131

For the Respondent: John A. Weiss, Esq.
101 North Gadsden Street
Tallahassee, Florida 32302

II. FINDINGS OF FACTS: Respondent admits the allegations contained in the Bar's complaint which I hereby accept and adopt as the findings of fact in this cause, to wit:

1. That Respondent was named as a principal and co-conspirator in a Federal Indictment filed in the United States District Court, Northern District of Indiana, Hammond Division in Case No. H-CR-83-36.

2. That the indictment alleged, inter alia, Respondent's complicity and involvement in commiting offenses against the United States of America, to wit: conspiracy to import a controlled substance (marijuana); and conspiracy to distribute and possess with intent to distribute a controlled substance (marijuana); all in violation of Title 21, United States Code, Section 952(a), 963, 841(a)(1) and 846.

3. That on or about June 25, 1985, Respondent was adjudicated guilty after a jury verdict as to one (1) count of conspiracy to import a controlled substance (marijuana) in

violation of Tile 21, United States Code, Section 952 (1) and 963; and one (1) count of conspiracy to distribute a controlled substance (marijuana) in violation of Title 21, United States Code, Sections 841(a)(1) and 846.

4. That Respondent was sentenced to serve two (2) years imprisonment as to each count, said sentences to run concurrently.

III. RECOMMENDATIONS AS TO GUILT: I find Respondent guilty of all violations charged with by The Florida Bar. I find that Respondent has violated Article XI, Rule 11.02(3)(a) (commission of an act contrary to honesty, justice and good morals) and 11.02(3)(b) (commission of a crime) of the Integration Rule of The Florida Bar and Disciplinary Rules 1-102(A)(3) (illegal conduct involving moral turpitude), 1-102(A)(6) (Conduct that adversely reflects on fitness to practice law) of the Code of Professional Responsibility.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE IMPOSED:

In making this finding, I have considered the testimony of all witnesses, argument of counsel, and prevailing case law.

In the last several years Florida has suffered the degenerative effects of drug trafficking. Unfortunately, a number of members of The Florida Bar have fallen victim to the lure of money or the intrigue of involvement. The Florida Supreme Court has addressed the issue of lawyers' involvement in drug activities and consequent felony convictions in The Florida Bar v. Wilson, 425 So.2d 2 (Fla. 1983).

> Respondent was engaged in illegal drug trafficking, a troublesome and serious crime. We have not hesitated in the past to disbar an attorney for similar acts even though a referee recommended less severe discipline. See The Florida Bar v. Beasley, 351 So.2d 959 (Fla. 1977). Illegal behavior involving moral turpitude "demonstrate(s) an intentional and flagrant disregard for the very laws Respondent is bound to uphold, the well being of the members of society, and the ethical standards applicable to members of the Bar of this State. In re Gorman, 269 Ind. 236, 240, 379 N.E.2d 970, 972 (1978). See also In re Roberson, 429 A. 2d 530 (D.C. Ct.App. 1981); In re Thomas, 420 N.E. 2d 1237 (Ind. 1981); State ex rel. Oklahoma Bar Association v. Denton, 598 P.2d 663 (Okla. 1979); Muniz v. State, 575 S.W. 2d 408 (Tex. Civ. App. 1978). "Of all classes and professions, the lawyer is most sacredly bound to uphold the laws. He is their sworn servant; and for him, of all men in the world, to repudiate and

> override the laws.... argues recreancy to his position and office." Ex Parte Wall 107 U.S. 265, 274, 2 S. Ct. 569, 576, 27 L. Ed. 552 (1883). "The public has a right to expect the most from him who lays the greatest claim to its confidence."
>
> Wilson at 4

It is therefore, my task to view a lawyer who has been convicted of two narcotics felonies in the gravest light. Particularly, considering that as Wilson, supra asserted, "the lawyer is most sacredly bound to uphold the laws."

Mr. Greenberg, has presented several witnesses who attested to his activities prior to his conviction and incarceration. All witnesses were credible and impressive. They testified to Mr. Greenberg's formation of a drug prevention crisis hotline, pro bono activities and general good character. The weight I have afforded to that testimony in terms of mitigation bears no adverse reflection on the witnesses or whether in fact the acts occurred. What causes me great difficulty in assessing the weight of the testimony, particularly relating to counseling potential drug users and/or abusers is the fact that Mr. Greenberg later became involved, to the point of serving prison time for conspiracy to traffic in marijuana, the very act he sought to discourage. This fact goes a long way toward neutralizing the "mitigating" evidence presented. Furthermore, I am mindful of the principle espoused in The Florida Bar v. Prior, 330 So.2d 697, 702 (Fla. 1976) which provides that "all events in an attorney's life prior to his conviction are in effect, overwhelmed by a felony conviction."

I have had an opportunity to review cases where the Florida Supreme Court has imposed less than a disbarment where an attorney was convicted of a drug related offense. In those cases there was evidence of mitigation which included a personal alcohol or drug problem, or an emotional problem. Recently, in The Florida Bar v. Jahn, _____ So.2d _____(Fla. 1987) (opinion filed June 25, 1987), the Court imposed a three year suspension on an attorney who was convicted of drug charges. The Court focused on two facts. First, the attorney had a severe chemical

dependency problem. Second, the convictions were unrelated to his practice.

In The Florida Bar v. Dietrich, 469 So.2d 1377 (Fla. 1985), Dietrich pled guilty to a felony. He was alcohol dependent. In The Florida Bar v. Carbonaro, 469 So.2d 549 (Fla. 1985), the attorney was convicted of drug charges. He suffered from a personality disorder causing him to be under psychiatric care. In The Florida Bar v. Rosen, 495 So.2d 180 (Fla. 1986), Rosen was convicted of drug charges. He was also severely addicted to cocaine.

In some of the foregoing cases, the court does recognize that the attorneys are capable of being rehabilitated by imposing less than a disbarment. Two factors distinguish those cases in which a non-disbarment sanction was imposed from the case before me. First, in each of the former cases, some purported justification for the attorney's conduct is present (eg. alcohol abuse or psychiatric difficulties). Second, in none of the former cases was the crime committed by a lawyer directly using his law practice.

Does such a view unfairly penalize Respondent for failing to fall personally victim to drugs or alcohol? Clearly not. Those other attorneys had a colorable justification for their abhorrent behavior; their minds were clouded with the poison they used and the need for the means to obtain the poison. Respondent, however, offers no excuse. His mind was clear and he knew better. He chose, though, with a full hold of his senses to cross the line.

I am convinced that the following cases imposing disbarment for drug convictions are persuasive and applicable to the instant matter. In The Florida Bar v. Anderson 482 So.2d 1 (Fla. 1986), Anderson was convicted of knowing importation of hydrochloride into the United States and arrangement for its sale. He was disbarred for a minimum of five years. In The Florida Bar v. Beasley, 351 So.2d 959 (Fla. 1977), the attorney was disbarred

after being convicted of delivery of marijuana. In The Florida Bar v. Ludwig, 465 So.2d 528 (Fla. 1985), Ludwig was convicted of five felony counts of delivery of a controlled substance and one count of grand theft. Ludwig was disbarred. In The Florida Bar v. Price, 478 So.2d 812 (Fla. 1985), disbarment was ordered where the attorney was found to have participated in a conspiracy to import marijuana into the United States, despite having been acquitted of the criminal charges. In The Florida Bar v. Kline, 475 So.2d 1237 (Fla. 1985), Kline was disbarred after knowingly and unlawfully possessing over 2,000 pounds of cannabis. See also The Florida Bar v. Marks, 492 So.2d 1327 (Fla. 1986).

In concluding the foregoing analysis, the words of the Court in The Florida Bar v. Hecker, 475 So.2d 1240, 1243 (Fla. 1985) are applicable and pertinent.

> The Bar also argues that the recommended suspension is inadequate given the gravity of respondent's misconduct . In the Bar's view respondent should be disbarred. We agree. Respondent's conduct in attempting to act as a drug procurer is wholly inconsistent with his professional obligations as a member of the Bar. We appreciate that disbarment is the severest sanction available to us and should not be imposed where less severe punishment would accomplish the desired purpose. The Florida Bar v. Moore, 194 So.2d 264 (Fla. 1966). We appreciate also that respondent has served his prison sentence, suffered other personal misfortunes, and appears to be genuinely remorseful. Nevertheless, respondent deliberately set out to engage in illegal drug activity for pecuniary gain. Illegal drug activities are a major blight on our society - nationally, statewide and locally. Necessarily, members of the Bar are brought into contact with illegal activity because of their professional obligations to offer legal assistance to clients accused of wrongdoing. Members of the Bar should be on notice that participation in such activities beyond their professional obligations will be dealt with severely. The conduct of respondent warrants disbarment. The legal profession cannot tolerate such conduct.
>
> Hecker, at 1243

Additionally, Mr. Greenberg's role in the drug conspiracy involved the forming of a corporation, with the knowledge that the corporation was being used to purchase an airplane for drug smugglers and with the knowledge that the principals of the corporation were using aliases. Further, he alerted members of the conspiracy that they were too "hot" to visit the Bahamas.

It is my strong feeling that the fact that Mr. Greenberg's law practice was used in the conspiracy should be considered as an aggravating circumstance. As support for that position, I have reviewed a decision of our sister state New Jersey. In The Matter of Goldberg, 520 A.2 1147 (N.J. 1987), the attorney was convicted of two felony charges of conspiracy to distribute narcotics. Goldberg's role in the conspiracy in great part employed his skills as an attorney. Mitigating circumstances were presented. They included Goldberg's character in the community, serious financial circumstances, and that his daughter suffered from a serious and degenerative kidney disease. The New Jersey Supreme Court, however, held that the mitigating factors did not override the seriousness of the aggravating factor of Respondent's criminal behavior.

> It must be emphasized that Respondent actively utilized his professional license and his legal skills as an attorney to violate the law. It is obvious that where, as in this case, an attorney's criminal deeds directly involve his law practice, the misconduct is even more egregious in the disciplinary context.
>
> Goldberg, at 1149

It is for the reasons stated in Goldberg, supra that cases involving attorneys convicted of felony drug charges which involved their law practice have been disbarred.

Based upon the foregoing, I recommend that Steven Greenberg be disbarred from the practice of law for a period of three years to run retroactively from the date of his felony suspension (July 23, 1985). I have considered the fact that a disbarment in this State is not permanent. Mr. Greenberg may reapply for admission after the three years have expired.

The Bar urges imposition of a five-year disbarment under the Rules Regulating The Florida Bar which became effective January 1, 1987. This disciplinary proceeding was pending long before that date. I recommend that the Court reject the Bar's position that the increased penalty (of a five-year disbarment instead of

a three-year disbarment under the former rules) is merely "procedural" and does not violate ex post facto principles.

In conclusion, I believe that the proposed disposition strikes a balance between fairness to the respondent and the necessity of justice for the public whose trust he violated.

V. RECOMMENDATION AS TO COSTS: I find the following costs to have been reasonably incurred by The Florida Bar.

Referee Level

Administrative Charge (Rule 3-7.5(k)(1))	$ 150.00
Final Hearing Transcript (June 26, 1987)	668.55
TOTAL	$ 881.55

Respectfully submitted this 16th day of October, 1987

DAVID P. KIRWAN
Referee

cc: Sid J. White, Clerk
Supreme Court of Florida
Randi Klayman Lazarus, Bar Counsel
Steven Greenberg, Respondent
c/o John A. Weiss, Counsel for Respondent