IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

vs.

RONALD S. GOLUB,

Respondent,

The Florida Bar File
No. 87-25122(11K) formerly
11K87M12; 87-25152(11K)
formerly 11K8743

Supreme Court Case No. 71,055

FILED
SID J. WHITE
MAR 2 1988
CLERK, SUPREME COURT
By _____
Deputy Clerk

## 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 December **4, 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: Richard Baron, **Esq.**
**703** N.E. 22nd Street
North Miami, Florida **33137**

11. FINDINGS OF FACT: Respondent stipulated to the facts of this case in his Waiver of a Finding of Probable Cause and Stipulation as to Facts dated July **9, 1987.** Those facts are set forth below:

a) That the Respondent was the attorney and personal representative for the Estate of Cecil Harlig.
b) That during the period of **1984** through **1986** the Respondent removed approximately **$23,608.34** from the Estate of Cecil Harlig.

c) That the Respondent did not have the permission of the heirs, debtors, or the Probate Court to remove said funds.
d) That the removed funds have not been replaced to date.

In addition, evidence was presented at the hearing which established the following facts:

Respondent is an attorney admitted to practice in New York in **1956** and in Florida in **1961.** He had no prior disciplinary incidents in either jurisdiction until the present complaint.

On August **19, 1987,** Respondent voluntarily contacted F.L.A. Inc. for assistance. He had a history of heavy use of alcohol dating back many years and his alcoholism had brought him to the point of contemplating suicide. F.L.A. Inc. arranged for Respondent to be taken to a facility for detoxification and then to an in-patient treatment center. At the time he contacted F.L.A. Inc., the Bar had received a complaint from a heir of the estate to the effect that she had been unable to contact the Respondent with respect to his handling of the estate, however no formal proceedings had been instituted other than a letter from the Bar to the Respondent which may or may not have actually been read by the Respondent. The imminence of the Bar proceeding was one of the factors which caused Respondent to seek help. His mental, physical, and financial problems were the other factors, including problems with his ex-wife and children. The Bar contacted the Respondent at the treatment center to which he had committed himself and he volunteered the details concerning the removal of the funds freely and openly to Bar counsel. He had not paid Bar dues for **1986** and was suspended from practice accordingly as of October 1, **1986.** The Bar recognized his "voluntary suspension" from practice in a communication demanding payment for the year **1986** and **1987** of the dues in arrears which

communication is in evidence. In September 1987, on advice of counsel, Respondent remitted the arrearages and in his petition for reinstatement set forth the reason for not paying his dues as his realization that at the time he was incapable of practicing law. Respondent has been suspended from the Bar for a period in excess of one year, from October 1, 1986 until his reinstatement on October 6, 1987. He is not now actively engaged in the practice of law.

The Respondent removed the funds from the estate over a period of about a year in small amounts.

Following release from the treatment center, Respondent became active in Alcoholics Anonymous under the supervision of F.L.A. Inc., and has pursued with enthusiasm a program of alcoholic rehabilitation.

Ronald Golub has not engaged in the practice of law since August 19, 1986. His present employer was informed by him of these proceedings. That employer, a research and development corporation, is convinced of his honesty and integrity and he is entrusted with company funds. Respondent has made only minimal restitution, largely due to his distressed financial circumstances. Respondent is remorseful. He has suffered substantially as a result of his alcoholism by losing his career, his family and his status in the community.

The Referee finds that the sole underlying cause of Respondent's professional misconduct was his alcoholism.

With regard to the damage cause by Respondent's misappropriations, it should be noted that Respondent removed a substantial sum of money over a two year period. The testimony revealed that there were six beneficiaries and a creditor. Three beneficiaries were aged 50, 66 and 71. One beneficiary died

prior to the final hearing. Michael Swann, the estate's administrator ad litem, appeared as a bar witness and testified that he had spoken to the wife of the deceased. She advised that her husband had been on dialysis for many years and had hoped to use his bequest from the Harlig Estate to help out. Another beneficiary was a synagogue in Canada. The Sixth bequest was to another synagogue for maintenance of gravesites. The creditor was a nursing home.

III. **RECOMMENDATIONS AS TO GUILT**: Respondent has admitted the following violations in his Waiver of a Finding of Probable Cause and Stipulation as to Facts, dated July 9, 1987:

> Respondent admits that his actions of removing monies from the Estate of Cecil Harlig constitute violations of Disciplinary Rule 9-102(b) (4) of the Code of Professional Responsibility and article XI, Rule 11.02(4) of the Integration Rule of The florida Bar.

I **RECOMMENDA AS TO P INARY MEAURES T BE IMPOSED**

Respondent has urged this Referee to accept alcoholism as a defense and/or mitigation of his act of embezzling from the Estate of Cecil Harlig.

The decision of The Florida Bar v. Knowles, 500 So.2d 140 (Fla. 1986) is a recent statement of the Supreme Court on this subject. Knowles misappropriated $197,900 from the trust fund accounts of several of his clients, who were elderly, over a four year period. He was later charged with eight counts of grand theft to which he plead no contest. A referee recommended disbarment. Knowles claimed that disbarment was too severe in light of the role that alcoholism played in causing his misconduct and considering his subsequent rehabilitation. In upholding the Referee's recommendation, the Florida Supreme Court stated:

> Although we recognize that alcoholism was the

> underlying cause of respondent's misconduct, it cannot constitute a mitigating factor sufficient to reverse the referee's recommendation to disbar under facts in this case. The misappropriations occurred continuously over a period of approximately four years. During this time, respondent continued work regularly. His income did not diminish discernably as a result of his alcoholism. We note further that the clients from whom he stole were elderly individuals who trusted him and for whom he held powers of attorney. Under these circumstances, we believe respondent should be disbarred regardless of his defense of alcoholism.
>
> Knowles, at 142

Certainly Knowles is distinguishable from the case at bar. Here no significant restitution has been made - although the evidence militates in favor of a finding that Respondent has not had the present ability to make restitution thus far. Unlike Knowles, Golub's income did diminish substantially as a result of alcoholism. Knowles was charged with a felony whereas Respondent has not been charged even though it appears that his embezzlement was indeed felonious.

In The Florida Bar v. Tunsil, 513 So.2d 120 (Fla. 1986), the Supreme Court noted that "(i)n the hierarchy of offenses for which lawyers may be disciplined, stealing from a client must be among those at the very top of the list." Id. . In Tunsil, the lawyer misappropriated some $10,500 which he had been holding in trust for a guardianship. In that case the Court imposed a one year suspension (rather than disbarment) after considering as mitigation the Respondent's cooperation with the Bar, his remorse, and the effect of his alcoholism.

At first blush, the Knowles and Tunsil cases appear to be irreconcilable.

A closer examination reveals that Knowles was involved in a four-year pattern of misappropriation of $197,900 from the trust fund account of several different clients. Tunsil appears to have involved a single misappropriation of $10,500 from one

client. The effect of alcoholism appears not to be as significant in Knowles as in Tunsil.

The case at bar falls between these extremes. Th effect of alcoholism upon Golub was much more extreme than upon Knowles - and the extent and amount of Golub's misappropriation was substantially less than Knowles' but greater than Tunsil's .

The Bar has urged the Referee to consider Respondent's lack of significant restitution to date as an aggravating circumstance. I decline to do so. As one Court has observed:

> "Judicial consideration of restitution as a mitigating factor in disciplinary proceedings creates the impression that sanctions are proportioned in accordance with ability to pay, rather than guages against the seriousness of the misconduct. Furthermore, according significance to restitution leads to an obvious and substantial possibility of unjust discrimination." Matter of Wilson, 400 A.2nd 1153, 1157 (N.J. S.Ct. 1979).

Because of Respondent's clear inability to make restitution to date, it would be manifestly unjust to consider his failure to do so an aggravating factor in this proceeding.

In view of the fact that Respondent has demonstrated eight of the mitigating factors as set forth in the Florida Standards for Imposing Lawyer Sanctions, namely: absence of a prior disciplinary record, personal or emotional problems, free and full coopration with the proceedings, previous good character, the impairment of extreme alcoholism, interim rehabilitation, remorse and the fact that he was suspended through his own act for more than one year, the Referee does not recommend disbarment. Cf. Florida Bar V. Shoreg, 500 So.2d 139 (Fla. 1986); Florida Bar v Seidel, 510 So.2d 871 (Fla. 1987).

For these reasons I recommend that Respondent be suspended from the practice of law for a period of three years and not be reinstated unless Respondent submits proof of alcoholic rehabilitation.

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

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| Administrative Costs: | |
| Referee Level | $150.00 |
| Grievance Committee Level (Rule 3-7.5(K)(1) | 150.00 |
| Final Hearing Transcript (December 4, 1987) | 623.45 |
| | $923.45 |

Dates this 29th day of February, 1908.

DAVID P. KIRWAN
Referee

cc: Sid J. White, Clerk
Supreme Court of Florida
Randi Klayman Lazarus
Bar Counsel
Ronald S. Golub, Respondent
c/o Richard Baron, Counsel for Respondent