IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

vs.

JAMES L. DIAMOND,

Respondent.
_____/

CASE NO. 71,347 and 72,258

AMENDED
ANSWER BRIEF OF RESPONDENT

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INTRODUCTION

The Florida, Complainant, will be referred to as the "the Bar" or "The Florida Bar". James L. Diamond, Respondent, will be referred to as "Mr. Diamond" or "Respondent". The symbol "TR" will be used to designate the transcript of the final hearing which was held on July 25, 1988. The transcript references will be designated by a page/line, for example TR 60/10-12 would mean transcript at page 60, lines 10 through 12. All emphasis has been added.

STATEMENT OF FACTS AND CASE

The Respondent, James Leonard Diamond, was admitted to the practice of law in 1953. (TR 51/8-10). Except for his practice of law and a stamp collecting hobby, he has no business experience. (TR 72/1-9, 10-17). He uses an attorney for his own business and personal business matters. (TR 111/12-18). Since 1959, he has been in legal association with Attorney Richard S. Wolfson, who testified at the final hearing below. (TR 31/14-15).

Through Richard Wolfson's brother, Gurdon, the law firm began doing work for Gurdon Wolfson, who was involved in and had formed companies dealing with oil and gas leases. (TR 32/1-5). When the work for Gurdon Wolfson began, it was done for free. (TR 59/7; TR 60/22). When Gurdon became more successful, he paid a retainer to the firm and even gave stock in the business to his brother and to the Respondent. (TR 61/106; TR 61/11-15, 18-19). Respondent was performing legal work for the various businesses, (TR 61/23-25), and had no check writing authority in the businesses. (TR 62/1-6). In 1982, Gurdon's wife of many years was dying of a brain tumor, Gurdon was very disturbed, and Respondent took over the ministerial work in the businesses, including signing checks. (TR 64/10-25). The businesses had millions of dollars in accounts and in securities, and the person in authority could readily have taken or stolen these funds. (TR 68/19-25 and TR 69/1). In fact, when Respondent gave all of the corporate records and turned over the business records and funds to a government appointed trustee, there were $2,000,000 or $3,000,000 of cash in the bank, (TR 69/12-19),

and between **$11,000,000** and $13,000,000 in annuities with future payouts. (TR **68/9-13).** Respondent accounted for every penny of the funds when he closed out the businesses (TR **68/14-18)** and did not even take out a penny for his own personal expenses. (TR **69/12-19).**

Prior to Respondent taking over the businesses, there had been a government investigation of the businesses in which their scripts €or salesmen had been approved, and to the Respondent, the business appeared legitimate, with one customer receiving a check of **$550,000.00.** (TR **65/21-23).** Respondent's job was primarily to €allow-up and make sure that the leaseholders timely received checks €or any entitlements, which he did. (TR **66/6-16;** TR at **20).** In **1983,** Respondent was charged with complicity and involvement in a **49** count indictment which was essentially for mail and wire fraud, committed primarily based upon salesmen failing to follow the government approved scripts and apparently giving the investors unrealistic expectations of financial success compared to the risk involved. See Indictment attached as Exhibit "B" to Bar Complaint.

From the beginning, even when Respondent had heard that the case might be going before a Grand Jury, he cooperated with the government and volunteered to appear and testify before the Grand Jury. (TR 70/12–14). He voluntarily gave the government full cooperation and all business records. (TR **20-24).** At the trial, he was one of only two Defendants who testified. (TR **22-24).** At no time did he refuse to cooperate, and even with The Bar he did not claim any privileges or fail to give any cooperation requested

by The Bar. (TR 71/16-20). Notwithstanding his limited involvement in these acts which occurred about ten years ago, Respondent was found guilty on six counts and served his sentence dutifully. (TR 72/18-22).

On May 9, 1985, Respondent was suspended, effective June 5, 1985, pursuant to an Order which is Exhibit "A" to The Bar's Complaint. After serving his sentence, Respondent has worked as a suspended attorney, in strict compliance with all Florida Bar rules and guidelines. (TR at 51-52). In fact, Respondent had sent quarterly reports to The Florida Bar, for about one year, showing that he had returned to Miami, (TR 102/7-9), when The Florida Bar attempted to serve its Complaint for disbarment on the Respondent at his former location where he had served his sentence. This was approximately one year after the appeal of his criminal conviction had been denied. (TR 101/18-20; TR 102/1-22). The case was presented to a Referee of The Florida Bar, the Honorable Amy Steele Donner. The case of The Florida Bar was "really very short". (TR 4/7). All The Bar did was "to introduce . . . two exhibits." (TR 4/8). These were the Indictment (which turned out to be an incorrect Indictment) and the Judgment and Probation Commitment. (TR 6/15-20). The Bar did not present any live witnesses and did not supplement these. (TR 7/19-21). An objection was made to the Indictment, inasmuch as it contained numerous unrelated charges against other individuals, but it was admitted over the objection. (TR 4/19-25, TR 5/1-8). The rest of The Bar's case was entirely argument of counsel and not evidence. (TR 7/22-12/18; TR 16/1-3).

The Respondent presented his own testimony extensively, and also presented the testimony of a secretary, Marilyn Fullom, who worked for him at the time in question. (TR at **20-21**). Respondent presented a young attorney, Michael Schwartz. (TR beginning at page **22**). The Respondent presented his former law partner and now employer, Richard Wolfson. (See TR beginning at **31**). The Respondent presented lawyer and former municipal judge, commissioner, city councilman, and Mayor of Miami Beach, Harold Rosen. (See TR beginning at **53**). The Respondent also presented former member of The Florida Bar Board of Governors, the ABA Board of Governors and past President of the Miami Beach Bar Association and The Florida Bar, Samuel S. Smith. (See TR beginning at **76**).

In addition to the foregoing witnesses, case and documents presented by Respondent, the Referee called and took testimony of the Honorable Edward B. Davis, the presiding Federal judge at Respondent's trial. (See TR beginning at **130**). Judge Davis, in response to both questioning by the Referee and cross examination by The Florida Bar reconfirmed that he did not see the culpability of Respondent the same as other defendants. (TR **130/21-25**). Judge Davis further stated that he saw the activities of Respondent really as being the type of work typically done by a lawyer. (TR 131/3-4; TR 131/25- TR 132/1-3). Judge Davis further reaffirmed that there was nothing to indicate, notwithstanding the conviction, that Respondent was a participant in the fraud overall. (TR **132/7-10**). Judge Davis also confirmed, as did the other witnesses that the Respondent is someone who is capable of and can be

rehabilitated. (TR 131/22-24).

The Referee, after hearing all of this evidence, weighing all of the documentary evidence, and otherwise being able to judge the credibility and merit of the testimony entered an Order Suspending Respondent, but not disbarring him.

The Florida Bar has appealed from that Order requesting disbarment. The Respondent wishes the recommendation of suspension to be upheld, but has requested a clarification that the testimony would appear to be sufficient for Respondent to be readmitted without further proceedings.

SUMMARY OF ARGUMENT

The Bar in this case presented very limited evidence to support disbarment. It relies, in fact, entirely on the mere fact of criminal conviction. Respondent, on the other hand, presented extensive testimony of numerous mitigating factors, which the Referee found to be factually true and incorporated in her report. These findings should not be disturbed unless clearly erroneous and unsupported by evidence.

The evidence strongly supports the report of the Referee. The reliance to any degree on the testimony of Judge Davis, the trial judge in the Federal criminal proceeding, was appropriate. Moreover, the judge had been listed by Respondent as a potential witness, and when the Court chose to call the judge as her own witness, she properly limited his scope and role. If anything, the Court was better informed and justice was better served by calling him. The use of witnesses was done within the scope of the Bar rules and the existing case law to attempt to show that Respondent is one who could in the future be permitted to again appear before the Bar and shows both his ability to be rehabilitated, plus probably his established by clear and convincing evidence that he is in fact already rehabilitated.

As a result, The Bar's appeal, seeking disbarment, should be denied, the Order of the Court below should be affirmed, and it should only be modified to the extent that no further proceedings should be required to permit the reinstatement of Respondent.

ISSUES AND ARGUMENT OF COUNSEL

I.

WHETHER THE FLORIDA BAR HAS CARRIED ITS BURDEN, ON THE FACTS PRESENTED BELOW, THAT RESPONDENT MUST BE DISBARRED AND NOT MERELY SUSPENDED?

The Report of the Referee in this case as in others, comes before this Court with a presumption of correctness, and the Referee's findings must be sustained if supported by competent and substantial evidence. The Florida Bar vs. Hooper, 509 So.2d 289, 290-291 (Fla. 1987). In the proceeding below, The Florida Bar had the burden to prove by clear and convincing evidence its position, and the proceedings before this Court do not take on the nature of a trial de novo. Hooper, supra at 291. The findings of fact of the Referee and recommended discipline are therefore presumed correct and normally upheld. The Florida Bar vs. Seldin, 526 So.2d 41 (Fla. 1988); The Florida Bar vs. Hooper, supra; The Florida Bar vs. Hooper, 507 so.2d 1078 (Fla. 1987); The Florida Bar vs. Golden, 502 So.2d 891 (Fla. 1987); and The Florida Bar vs. Neely, 502 So.2d 1237 (Fla. 1987). In considering the burden of proof upon The Bar, The Bar chose its own course and presented only two exhibits. (TR 4/8). These exhibits were the Indictment (TR 6/15-17) and the Judgement and Probation Commitment. (TR 6/18-20). They stated that they were not supplementing the record and that that is all they were relying upon. (TR 7/19-21). With all due respect, it is submitted that the mere submission of those documents when applying for disbarment changes and misconstrues the Bar rules from

mandatory suspension for a criminal conviction to mandatory disbarment, absent further evidence. The Bar did present the entire Indictment and Commitment, over the objections of the counsel for Respondent. (TR 4/19-25; TR 5/1-8; TR 12/22- TR 13/11). The rest of the evidence or case against Respondent, if any, was merely the argument of counsel for The Florida Bar. (TR 7/22- TR 12/18). Counsel for Respondent also pointed out that The Bar's argument is not evidence. (TR 16/1-3). The Court did accept the entire Indictment, over the above objections. However, the value of the remaining portion of the Indictment is and should be minimal, and it is respectfully submitted that it is inappropriate to present such evidence, without further testimony or support, inasmuch as other relevant testimony should only be considered if proven by clear and convincing evidence. ~~The Florida Bar vs. Stillman~~, 401 So.2d 1306 (Fla. 1981). By not presenting any additional testimony or evidence, The Bar, it is submitted, forfeited its right to make broad and sweeping accusations about any facts except those squarely within the portions of the Indictment of which Respondent was ultimately found guilty, and for which he has paid a substantial penalty and already stands suspended from the practice of law.

The difference between disbarment and a continuation of suspension is primarily the fact that the suspended attorney is a member of The Florida Bar who is not entitled to practice, but who it may be presumed can be reinstated to the practice of law in the future. The disbarred attorney must go through the procedures of

The Florida Board of Bar Examiners, and leaves the practice with the presumption that he should never practice again.

The Supreme Court of Florida has held that "Disbarment is an extreme penalty and should only be imposed in those rare cases where rehabilitation is highly improbable." The Florida Bar vs. Davis, 361 So.2d 159, 161 (Fla. 1978); also see The Florida Bar vs. Felder, 425 So.2d 528, 530 (Fla. 1982). In the case at bar, we are dealing with a Bar prosecution as a result of a felony conviction. Under former Art. XI, R.11.07(4) and current Rule of Discipline 3-7.2(e), an attorney convicted of a felony is suspended, but not automatically disbarred. Each case is unique and must be assessed or determined individually. The Florida Bar vs. Breed, 378 So.2d 783 (Fla. 1980). The determination in each case is through the examination of evidence and the filing of a report by a referee appointed by the Supreme Court of Florida. Art. XI, R.11.06 of the former Integration Rule of The Florida Bar and current Rule of Discipline 3-7.5. The referee needs to decide from all the facts if a less severe punishment than disbarment is appropriate, and in the event that The Florida Bar petitions for disbarment. The Florida Bar vs. Pincket, 398 So.2d 802 (Fla. 1981).

In order to sustain its burden of proof that a respondent attorney be disbarred, The Bar must Drove not only that a wrong has Occurred, but that the attorney was motivated by a corrupt motive. The Florida Bar vs. Thomson, 271 So.2d 758, 761 (Fla. 1972); Gould vs. State, 127 So. 309 (Fla. 1930). The burden of The Florida Bar in this respect, as in all other respects is a burden to prove its

case by clear and convincing evidence. This is a burden higher than a mere preponderance, but less than proof beyond and to the exclusion of a reasonable doubt.

In each and every case, there are mitigating factors which the court consider both for determining whether disbarment is an appropriate discipline, and for setting the length of a suspension and when it is to begin. The Florida Bar vs. Lord, 433 So.2d 983 (Fla. 1983); The Florida Bar vs. Carbonaro, 464 So.2d 549 (Fla. 1985). Where a case is tried some time after the events was committed, the Court has the full authority to make the ruling nunc pro nunc to the date on which the original suspension took place, or such other date as the Court may deem appropriate. See Carbonaro, supra. Even where a crime has occurred, including an offense against the attorney's own client, the Court has pointed out that disbarment could have been avoided, if the respondent had presented appropriate evidence of mitigating factors at the time of trial. The Florida Bar vs. Wilson, 425 So.2d 2 (Fla. 1983).

The rehabilitation or interim rehabilitation of the respondent attorney is absolutely a factor which the referee should consider. Lord, supra; Davis, supra. Where such evidence of rehabilitation is presented, the argument that disbarment is not permanent or is more appropriate is wrong and "to follow it when there is an expectation of rehabilitation would needlessly blur the distinction between suspension and disbarment." The Florida Bar vs. Blessing, 440 So.2d 1275, 1277 (Fla. 1983).

Lawyers may be treated differently for the commission of the

same criminal offense. The culpability and even the moral turpitude involved will depend not only the nature of an offense, but also on the attendant circumstances. The Florida Bar vs. Davis, 361 so.2d 159, 161 (Fla. 1978). Even after the commission of an offense, if this Court can find that there is no intent to defraud, that is one of the facts which must be considered. Davis, supra. As was pointed out above, the Court in Davis specifically stated the following:

> "Disbarment is an extreme penalty and should only imposed in those rare cases where rehabilitation is highly improbable." Davis, supra.

This Court should look at the evidence adduced below and determine whether any punishment less severe than disbarment can accomplish the desire purposes of Bar discipline. The Florida Bar vs. Moore, 194 So.2d 264 (Fla. 1966); The Florida Bar vs. Ruskin, 126 So.2d 142 (Fla. 1961).

The two exhibits adduced below by the Bar simply did not provide sufficient evidence to warrant disbarment.

II.

WHETHER THE FINDINGS OF THE REFEREE ARE CLEARLY ERRONEOUS AND LACKING IN EVIDENTIARY SUPPORT?

It appears that the Court below was familiar with and took into account factors established by this Court which can be used to decide whether suspension in an appropriate remedy. Among the

cases that it appears the Referee relied on are Florida Bar vs. Lord, 433 So.2d, 983 (Fla. 1983), The Florida Bar vs. Carbonaro, 464 So.2d 549 (Fla. 1985) and The Florida Bar vs. Wilson, 425 So.2d 2 (Fla. 1983). In addition, the Referee also seemed to appreciate and had reviewed The Florida Bar vs. Blessing, 440 So.2d 1275, 1277 (Fla. 1983), in deciding whether the stigma of disbarment was necessary to encourage reformation or rehabilitation of the Respondent, or whether disbarment would result in any greater protection of the public than a three year suspension. In addition, the Referee reviewed and contemplated the mitigating factors set forth at pages 73 and 74 of "Florida's Standards for Imposing Lawyer Sanctions", Section 9.3, published by The Florida Bar and appears to have found that many of those mitigating factors were present.

Let us look at what was proved by the evidence below, in seeing if there was competent substantial evidence to support the discretion of the Circuit judge below. In doing so, it is suggested that the testimony of the other witnesses should be given considerable weight. Respondent's former partner testified that this was an isolated incident in Respondent's life. (TR 35/25 and TR 36/5). He also testified to a crushing and debasing effect that the conviction had upon Respondent, but the fact that Respondent has gotten a handle on his problems and has gotten his life back in order, perhaps remarkably so. (TR 46/19-25). As to rehabilitation, Samuel S. Smith, a prominent and highly regarded past President of The Florida Bar, among other distinctions, stated

that Leonard Diamond could absolutely be rehabilitated. (TR **78/16-20** - TR **79/1**). This testimony was corroborated by Attorney Allen Chase (TR **50/4-5**) and by Attorney and highly regarded public servant, Harold Rosen, who felt that Respondent was already rehabilitated. (TR **56/8-19**. Also see the testimony of Attorney Michael Schwartz at TR **27/4-11**).

Respondent's former secretary testified that Respondent never showed an improper motive for any of the actions related to the business which brought about the criminal indictment. (TR **20-21**). Likewise, Mr. Smith found no improper motives in the life and conduct of Respondent, (TR **79/16-23**), nor did his former partner, Mr. Wolfson (TR **34/8-12**) and other witnesses. Most telling of all, however, was perhaps the testimony elicited by the Referee from the Honorable Judge Edward B. Davis. The Florida Bar seems to feel that in eliciting what can only be deemed to be very favorable evidence from Judge Davis, the Referee may somehow have considered impermissible evidence. This is absolutely not true. The Referee prefaced her conversation with the Honorable Judge Davis with the following quotes beginning at line **2** at page **126** of the transcript:

> "I don't want to go behind the conviction. I want to go behind the sentence--not behind it, at least current with the sentence, because he (referring to Judge Davis) made some comment when he sentenced him and I would like to ask him about it.
>
> "He seems to have a conflicting view with the government on this case, which of course, sitting in court, he sees both sides, both the defense and the prosecution side.
>
> "In his view of the case, sometimes the Court is tempered some by the other side.

"We expect the prosecution to have a single-minded purpose view of prosecution, the defense the same thing and the Court to be much more impartial to the whole proceeding."

The Florida Bar reads into this something other than the clear language of what the Honorable Referee below stated. Also, despite an effort to cross-examine Judge Davis, The Florida Bar only elicited a repetition of Judge Davis' comments at the time of the sentence, and his direct comments to the Court that he sees the Respondent as someone who can be rehabilitated, (TR 31/22-24), and someone who really worked as a lawyer, and whose culpability was not the same as other defendants. (TR 31/3-4; TR 130/21-25). The judge, despite the cross-examination by The Florida Bar only reiterated that there was nothing to indicate that Respondent was a participant in the fraud overall. (TR 132/7-10).

Respondent wishes to make clear that he is not now and was careful during the proceedings below, not to argue that his conviction was invalid or that he was going behind his conviction. In fact, the testimony of Respondent himself, stated that he recognizes that he got a fair trial, although not a perfect one, but that he got all that he was legally entitled to get. (TR 82/6-14). For this, he stated he shows no animosity. (TR 81/16-24). Almost from the moment he was charged, he has had to turn down honorary and voluntary positions, although he had previously held chairmanship of a statewide commission and had been generous with both his time and efforts in the past. (TR 73/24; TR 74/1-25; TR 75/4-14). The whole proceeding has, in his own words, made him

more reclusive, embarrassed and humiliated him, and has been truly demeaning. (TR 73/8; 10-14; 22-24).

Notwithstanding the almost familial relationship with Gurdon Wolfson, who initiated the businesses and turned them over to Respondent, Respondent no longer would repose such confidence in any future client. (TR 73/3-5).

With all due respect to The Bar, the argument of The Bar is not supported by the record in the way indicated by The Florida Bar. The Florida Bar in its opening sentence of its argument states that the Respondent was President and attorney "of an organization which perpetrated a massive fraud on consumers, utilizing 'boiler room' and telephone solicitation." (TR 62). In fact, reading both pages 62 and 63 of the transcript is instructive. They do not state what the Bar says. Respondent sets out his relationship to the various companies, and points out that he was, oddly, convicted of his alleged acts in connection with the company where he was probably the least involved and certainly not an active participant in any fraudulent activity. The truth is that if anything, Respondent's guilt as unfortunately determined by a jury was probably the result of his total general business inexperience. (TR 72/1-9 and 10-17; TR 111/2-18). Respondent's only prior business experience and only other business experience to date, for which he does not use an attorney is his hobby of stamp collecting. In that hobby, as Samuel Smith testified, Mr. Diamond is frequently entrusted with thousands of dollars worth of stamps, without the benefit of a receipt by the person who gave him

the stamps. (TR **77/17-25** – TR **78/1-12.** Also see TR **35/12-24)** (Wolfson testimony).

The guilt, if any, of the Respondent in this case, was trusting someone with whom he had a family relationship through his partner of many years. He took over a business that could only be entrusted to someone of honesty, inasmuch as Respondent came in receipt of between **$2,000,000** and $3,000,00 in cash and **$11,000,000** to $13,000,000 in cash value of annuities, all of which he turned over, fully accounted for, when the businesses were closed. (TR **69/12-19** and TR **68/9-13** and **14-18).** When the businesses were closed, Respondent could have walked away, conservatively, with between $13,000,000 and $16,000,000. (TR **68/19-20** – TR **69/19).** He did not, and this fact and the other testimony eloquently support the Referee's order.

111.

WHETHER OR NOT THE CLEAR, CONVINCING EVIDENCE SHOWS THAT RESPONDENT COULD BE REINSTATED AUTOMATICALLY WITHOUT FURTHER PROCEEDINGS OF THE FLORIDA BAR?

It may be an unusual argument, but the undersigned is compelled to say it nonetheless. The undersigned has reviewed all Bar cases going back to the establishment of an integrated Bar in Florida. In that entire record, the undersigned has found no cases to parallel this one with respect to the showing of honesty, trustworthiness, and potential rehabilitation of Respondent, in that the Respondent properly accounted for and voluntarily released $13,000,000 to $16,000,000, which were under his dominion and

control. No other case reviewed by the undersigned shows so little having done by a respondent to enrich himself as was the case with Mr. Diamond. Someone who accounts to the penny for, and then voluntarily and openly truns over $13,000,000 to $16,000,000 does not deserve that it be suggested he is incapable of or should never be able to be reinstated through The Bar, without the additional discredit of disbarment, in an otherwise untarnished 30-year career. It is for that reason that the Respondent also respectfully believes that the evidence already adduced before this Court is sufficient for it to find, within its plenary authority, that the evidence adduced would show that Respondent is in fact already rehabilitated, as was remarked upon by Mr. Rosen. (TR 56/8-19). Indeed, Respondent continues to keep abreast of and has kept abreast of and has kept abreast of law and ethics on a regular basis. (TR 103 - TR 105). Depriving him of an automatic reinstatement under these facts only further deprives the community of the charitable and public service which this talented attorney could otherwise give. (TR 73/25; TR 74/1-20 and 21-25; TR 75/4-14).

While The Florida Bar is not bound by a statute of limitations, The Florida Bar should present its cases within a reasonable time. The Florida Bar vs. Lipman, 497 So.2d 1165 (Fla. 1986). These offenses occurred nearly 10 years ago. (TR 64/10-25). The Bar did not even seek disbarment until one year after the denial of Respondent's appeal. (TR 101/18-25 - TR 102/1-22). This was already several years after he had been temporarily suspended.

This is a case where there is no genuine relationship of the attempted and demanded punishment with the time, significance, or facts underlying both the criminal case and the man against whom the punishment is sought to be extracted. The prior decisions of this Court, such as Lord, Blessing and Carbonaro, supra, all seem to show that the Referee ought to carefully examine a variety of factors to try to reach a thoughtful decision. The other cases, such as Hooper, supra, seem to show that once the Referee has reached such a thoughtful decision, it should not be lightly disturbed.

With all respect to The Florida Bar, it has failed to present an adequate level of proof at trial, while the Respondent has put substantial, direct, material, and relevant evidence into the record upon which the Referee below relied and which she incorporated into her Report. If anything, the record was strong enough to permit this Court to use its plenary power to state that the evidence would permit an automatic reinstatement without the burden of further proceedings on Respondent, While the Court below did stay the reinstatement proceedings, it had earlier ruled that discovery in both proceedings was to continue contemporaneously. In fact, The Bar did its perfunctory advertising for adverse testimony or comments about the potential reinstatement of Respondent and notwithstanding receipt of his tax records and other documents from the broad matters required by reinstatement proceeding, its total case was two paper exhibits. There was no other evidence presented by The Bar.

It is sometimes difficult to argue the negative, but this is a case which merits it. The Bar had every opportunity to put on negative evidence if it had any. None was presented. From this lack of evidence, The Bar should not be permitted to disbar Respondent, nor to further delay his readmission.

CONCLUSION

The Report of the Referee below should be approved. The only modification in the Report should be that upon the completion of the three years of suspension, nunc pro tunc, Respondent should be deemed readmitted without the necessity of yet another trial before the Referee.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of the foregoing was furnished by Federal Express to Sid J. White, Clerk, Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32399-1927 and that a true and correct copy of the foregoing was furnished by U.S. Mail to Randi Klayman Lazarus, Bar Counsel, The Florida Bar, Suite 211, Rivergate Plaza, 444 Brickell Avenue, Miami, Florida 33131 and John T. Berry, Staff Counsel, The Florida Bar, Tallahassee, Florida 32399-2300, this 15th day of March ~~February~~, 1989.

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