

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

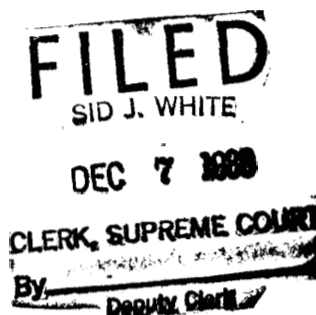
THE FLORIDA BAR,
Complainant,

Supreme Court Case No. 71,479

v.

LANCE E. EISENBERG,
Respondent.

REPORT OF REFEREE



I. SUMMARY OF PROCEEDINGS:

The undersigned was appointed Referee in this case by Chief Justice of the Supreme Court of Florida on December 16, 1987. Accordingly, the undersigned presided in a disciplinary action brought by The Florida Bar pursuant to Rule 3-7.4, Rules Regulating The Florida Bar.

The following attorneys appeared as Counsel for the parties:

For The Florida Bar: Paul A. Gross of Miami

For the Respondent: Nicholas R. Friedman of Miami

The final hearing in this case was held on September 20, 1988 at the Broward County Courthouse, Ft. Lauderdale, Florida. Although the venue in this case would normally be in Dade County, the Respondent has waived venue and has agreed to have this hearing at Broward County, Florida (T. 9).

11. FINDING OF FACT AS TO EACH ITEM OF MISCONDUCT OF WHICH THE RESPONDENT IS CHARGED:

After considering all the pleadings and evidence before me, pertinent portions of which are commented upon below, I find as follows:

On or about September 9, 1986, the Respondent pled guilty to and was convicted of conspiracy to defraud The United States and departments and agencies thereof in violation of Title XVIII, U.S. Code, Sec. 371 and of using a facility in the interstate and

foreign commerce in an illegal act in violation of Title XVIII, U.S. Code, Sec. 1952(a) (1)(3). These violations are federal felonies. The Respondent was sentenced to two years on Count I and five years on Count 11. However, the sentence imposed on Count II was suspended until further order of the Court, and the defendant was placed on probation for a period of five years to commence upon completion of the sentence imposed in Count I. In addition, the Respondent was ordered to pay a fine in the amount of \$10,000 on each Count, making a total fine of \$20,000. As a special condition of probation, it was ordered and adjudged that the defendant was to surrender his license to practice law and that he was not to reapply for professional license as an attorney nor was he permitted to engage in any way in or with the profession or practice of law. The Respondent, while acting in the capacity as an attorney was, what is commonly known as, "laundering money" obtained from the illegal importation of marijuana. For details, see Bar Exhibits 2, 3 and 4.

Because of the Respondent's conviction of the two federal felonies, he was suspended from The Florida Bar pursuant to Rule 3-7.2(e) of the Rules Regulating The Florida Bar, effective September 3, 1987. Bar Exhibit 1.

III. RECOMMENDATIONS AS TO WHETHER RESPONDENT SHOULD BE FOUND GUILTY:

Based upon the Respondent's response to the Request for Admissions and his Answer to the Complaint, in addition to his conviction in his criminal trial, it is clear and convincing that he is, in fact, guilty of the allegations in The Florida Bar's Complaint as well as the Amended Complaint. Accordingly, I recommend that the Respondent be found guilty of Article XI, Rules 11.02(3)(a)(b), Integration Rule of The Florida Bar (Commission of an act contrary to honesty, justice, and good morals and commission of a crime) and Disciplinary Rules

1-102 (A)(1) (violation of a Disciplinary Rule), DR 1-102 (A)(3) (illegal conduct that involves moral turpitude), DR 1-102 (A) (4) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation) and DR 1-102 (A)(6) (conduct that adversely reflects on his fitness to practice law) of the Code of Professional Responsibility.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

I recommend that the Respondent be disbarred from the practice of law in Florida. However, I recommend that the disbarment be nun pro tunc September 3, 1987, which is the date that the Respondent was suspended by The Supreme Court of Florida from practicing law due to his felony convictions. Although I realize that disbarment is a very severe form of discipline, I believe that illegal drug activities are a major blight on our society, nationally, statewide and locally [The Florida Bar v. Hecker, 475 So.2d 1240, 1243 (Fla. 1985)]. In the Hecker case, the Supreme Court of Florida warned members of The Florida Bar that they should be on notice that participation in such activities will be dealt with severely. In this case, the money laundering activities of the Respondent occurred while he was acting in the capacity of an attorney. In addition, the illegal activities of the Respondent encompassed a period of over four years. I did give serious consideration to the testimony of eight witnesses who testified on behalf of the Respondent. I am also aware of the fact that the Respondent did cooperate with the government and he did plead guilty at his criminal trial. I also considered the Supreme Court decision in The Florida Bar v. Pettie, 424 So.2d 734 (Fla. 1982). In that case, the Court believed that Pettie's cooperation with the government justified a reduction in the degree of discipline to be imposed. In that case, Mr. Pettie rendered substantial and material assistance to the law enforcement people. In addition, he placed himself in

personal danger by wearing a "body bug" at the request of the Department of Law Enforcement. The degree of cooperation with the government by the Respondent in this case does not compare with the substantial amount of cooperation and personal danger involved in the Pettie case. In the case at hand, the reason Respondent approached the government was for the purpose of entering plea negotiations. (T. 82, lines 12-22). His cooperation was not "going undercover", as was the situation in the Pettie case. (T. 83, lines 4-14). Therefore, I do not believe that the Respondent's cooperation with the government in this particular case warrants a reduction in the degree of discipline. According to paragraph 5(a) and (c) of Florida Standards for Imposing Lawyer Sanctions, disbarment is appropriate when "a lawyer is convicted of a felony under applicable law" and when "the lawyer engages in the sale, distribution or importation of controlled substances." Paragraph 9.22 of Florida Standards for Imposing Lawyer Sanctions, states that, "dishonest or selfish motives, a pattern of misconduct and multiple offenses are factors which may be considered in aggregation." In this case, the Respondent was convicted of two federal felonies involving "laundering of drug money." There were dishonest and selfish motives and there was a pattern of misconduct and multiple offenses continuing over a period of approximately four years. In view of this, it is my opinion that the Respondent should not be a member of The Florida Bar.

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD:

The Respondent is 43 years of age and he is married and has two children. He was admitted to The Florida Bar during 1973. He was admitted to practice law in Ohio during 1970 or 1971, however, he never practiced law in that state. The records at The Florida Bar indicate that the Respondent has no prior disciplinary history.

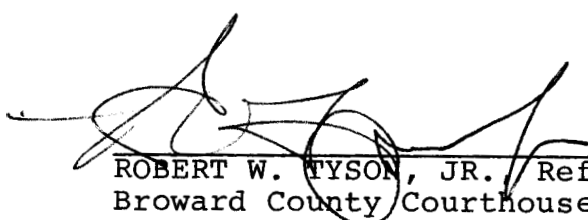
VI. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED:

I find the following costs were reasonably incurred by The Florida Bar:

Administrative Costs at Referee Level: [Rule 3-7.5(k) (5), Rules of Discipline]	\$ 150.00
Court Reporter costs for hearing dated September 20, 1988	487.00
USDC Certified Copies	15.50
Bar Counsel Travel Expenses (9/20/88)	11.00
TOTAL COSTS:	<u>\$ 663.50</u>

I recommend that the total costs in these proceedings that were expended by The Florida Bar in the amount of \$663.50 be charged to the Respondent and that execution should issue.

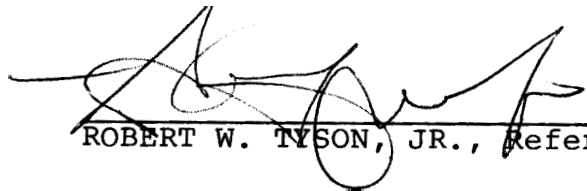
Dated this 29th day of November, 1988.


ROBERT W. TYSON, JR., Referee
Broward County Courthouse

Ft. Lauderdale, Florida
(305) 357-7807

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that conformed copies of the foregoing Report of Referee were mailed to: Paul A. Gross, Bar Counsel, The Florida Bar, 444 Brickell Avenue, 211 Rivergate Plaza, Miami, Florida 33131; Nicholas R. Friedman, Friedman, Baur, Miller & Webner, P.A., Attorneys for Respondent, 2200 New World Tower, 100 N. Biscayne Blvd., Miami, Florida 33132 and to John T. Berry, Staff Counsel, The Florida Bar, Tallahassee, Florida 32399-2300 this 29th day of November, 1988.


ROBERT W. TYSON, JR., Referee