IN THE CIRCUIT COURT FOR
BROWARD COUNTY, FLORIDA

CASE NO.: 71,696, 72,024
72,112 & 72,553

JUDGE: MARK A. SPEISER
(Referee)

THE FLORIDA BAR,

Complainant,

vs.

MICHAEL J. KNOWLES,

Respondent.

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Article XI of the Integration Rule of the Florida Bar, a hearing was held on June 9, 1989. The Pleadings, Notices Orders, Transcripts and Exhibits all of which have been forwarded to the Supreme Court of Florida constitute the record in this case.

The following attorneys appeared as counsel for the parties:

For the Florida Bar: Randi Klayman Lazarus, Esq.

For the Respondent: David J. Finger, Esq.

II. FINDINGS OF FACTS 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:

Case No. 72,112

This Complaint alleges that on or about February 2, 1982 the Respondent was retained by Wendy Horner West to represent her in a dispute with Keyes Realty Company arising from her purchase of a home with substantial defects. It is contended that the Respondent failed to diligently prosecute Ms. West's claim, failed to respond to her repeated inquiries in writing and by telephone concerning the status of her case, and failed to keep schedule appointments with Ms. West. As a consequence of the

foregoing, Ms. West discharged the Respondent and was required to retain new counsel. Thereafter, Respondent neglected to respond to inquiries from Ms. West's new attorney concerning the status of her case. By Order dated June 10, 1988 (Referee Exhibit #1), the foregoing matters set forth in the complaint were deemed admitted (pg. 11 of transcript).

CASE NO. 72,553

The Complaint alleges that on or about June 5, 1987 Braman Cadillac of Miami performed work on the Respondent's automobile totalling $2,405 and that to pay for said services, the Respondent issued on or about that same date check number 5323 for the same amount on his operating account at Eagle National Bank of Miami, account number 0103133057. On or about June 5, 1987, Telecheck Southcoast Verifications, Inc. purchased this check from Braman Cadillac. Thereafter, on or about June 25, 1987 Eagle National Bank of Miami, dishonored this check due to the fact that Respondent's account at said bank had insufficient funds to cover this check. Repeated efforts by Telecheck to collect this sum from the Respondent proved to be unsuccessful Respondent at no time indicated nor displayed any dissatisfaction with the services provided by Braman Cadillac and as of the date of the Complaint, June 10, 1988, Respondent still had not paid the monies owed Telecheck by virtue of his dishonored check. By Order dated February 21, 1989 (Referee Exhibit #2), the foregoing matters in this Complaint were deemed admitted (pg. 11 of transcript).

CASE NO. 72,024

Jean Julbert Seme ("Seme") retained the Respondent to represent him. On June 25, 1984 Respondent filed a civil rights complaint on behalf of Seme in the United States District Court for the Southern District of Florida. Seme a Haitian, immigrated to the United States in November, 1979. The lawsuit arose out of injuries Seme received while working at a labor camp in 1981 in North Carolina. The Complaint was premised on a violation of his civil rights. Seme gave the Respondent the $60 filing fee for the case and the Respondent agreed to handle the matter on a contingency fee arrangement. The Respondent advised Seme he

had a good case and subsequently furnished him with a copy of the Complaint.

Thereafter, Respondent met and answered Seme's telephone calls on a few occasions. Seme's personal files on this matter were stolen from his vehicle and he began attempting to contact the Respondent to secure a copy of the Complaint and the documents he had furnished the Respondent. Seme was advised by Respondent that he or his secretary lost Seme's file. Although Seme concedes he spoke with the Respondent between ten and fifteen times, Seme attempted unsuccessfully on at least twenty other occasions during this same time frame to meet with the Respondent or to talk with him by telephone. He went to Respondent's office on many times and was told that Respondent was not in or could not keep the appointment. During this time period, Seme moved residences on several occasions but continuously kept Respondent advised of his new address.

The frustrations endured by Seme in attempting to reach Respondent led him to contact the Dade County Bar Association who in turn referred him to a private attorney Clifford Hark. On June 19, 1986, Hark advised Seme that by Order dated July 11, 1984 less than a month after the Complaint had been filed, the Federal District Court sua sponte dismissed the cause of action without prejudice. A copy of this Order had been mailed to the Respondent at the time of its issuance. Mr Hark also made repeated efforts to contact Respondent about the status of Seme's case both before he went to the Clerk of the United States District Court to review the Clerk's file and secure a copy of the Order of Dismissal as well as afterwards but Respondent failed to return his telephone calls or meet or correspond with him.

Even after Seme learned to his dismay through Hark that his case had been dismissed almost two years earlier he persisted in his attempt to meet with the Respondent. On two successive Saturdays Seme had schedule appointments with the Respondent. On one occasion the Respondent called and cancelled it and the following Saturday after Seme drove from his home in West Palm Beach to Miami, the Respondent did not show up. Thereafter, Seme contacted the Florida Bar when he learned that his claim arising

from his permanent North Carolina injuries was barred by the statute of limitations. He was never contacted by Respondent in writing or by telephone and advised his civil complaint had been dismissed.

The Respondent testified that he had spoken to two attorneys who had previously represented Seme on this matter, one in North Carolina and one in Immokalee, Florida prior to Respondent's filing the complaint. Respondent further indicated he had experience and knowledge in this type of federal civil rights litigation. Respondent claimed that both before and after he filed the complaint Seme moved around quite a bit and he did not have an address or telephone number to reach Seme. Consequently, Respondent indicated to had to rely on Seme to contact him and that Seme would without appointment would drop by his office with annoying frequency. Respondent conceded there were several occasions he could not keep appointments because of other court commitments.

Respondent claims that he discussed the dismissal of the Complaint with Seme approximately two to three months after he was notified of its dismissal and that he waited that long to advise Seme because he had no way to contact Seme and he did not know whether Seme wanted to pursue the case due to the potential financial expenses that would be incurred. The upshot of this meeting was that they would go forward with an amended complaint after Respondent did some further investigation and that Seme would get back to him with a phone number and address where he could be reached. Respondent claims he never wrote a letter to Seme advising him of the results of his investigation and his desire to file an amended complaint. Respondent stated he went to Seme's last known address but that there was no one there he could communicate with and leave a message for Seme to contact him. Respondent testified after this meeting he unsuccessfully attempted to reach Seme and consequently he placed his case with the inactive files.

The next time Respondent claims he heard from Seme was when the Bar Complaint was filed against him. Respondent indicated he had no memorandum or notes in his file documenting

he met with Seme and advised him that the Complaint had been dismissed. Respondent never kept a log of the dates and times he allegedly met or spoke by telephone with Seme.

CASE NO. 71,696

Counts I-IV

Between January 1, 1985 to October 30, 1986 Respondent maintained a trust account at the Eagle National Bank of Miami ("Eagle") and between January 1, 1985 to July 31, 1986 maintained a trust account at the Bank of Miami. On January 16, 1987, Florida Bar auditor Carlos Ruga completed an audit of Respondent's trust accounts at the foregoing banks during the identified periods. The audit conducted by Ruga indicated the alleged trust account violations as hereinafter detailed:

a) failure to preserve the minimum required trust accounting records

b) unidentifiable deposits and withdrawals

c) failure to identify the date and source of all funds received

d) failure to identify the client or matter for which funds were received

e) failure to maintain separate cash and disbursement journals identifying:

    1) the client or matter for which funds were received disbursed or transferred
    2) the date on which all trust funds were disbursed or transferred
    3) the check number for all disbursements
    4) the reason for which all funds were received disbursed or transferred

f) failure to maintain a separate file or ledger with an individual card or page for each client or matter, showing all individual receipts, disbursements and unexpended balances

g) failure to follow the minimum trust accounting procedures

h) failure to prepare and/or preserve trust account balance reconciliations

At an audit conducted by Ruga, Respondent was subpoenaed to bring to the Bar all his trust account records for the aforementioned accounts. Ruga testified Respondent only produced a few cancelled checks and some bank statements. Respondent indicated these were the only records he had. Ruga then wrote and telephoned Respondent to bring to the Bar office his receipts and disbursement journals and ledgers and explain

the discrepancies in these accounts. Respondent however never responded to this request.

With respect to the Eagle account, Ruga's analysis revealed that there were four checks issued by Respondent and presented for payment (one was dishonored twice) that were returned due to insufficient funds and they are discussed below:

a) On or about January 3, 1985 Respondent deposited a check in the amount of $23,450.01 received from Al Stewart, Carol City Management. Respondent issued from this same account check no. 367, dated January 3, 1985 payable to F.W. Woolworth in the amount of $23, 450.01. James Hauser, Esq. counsel for Woolworth received this trust account check in February, 1985. Woolworth then deposited this check and on March 11, 1985, this check was dishonored by Woolworth. Mr Hauser or a representative contacted Respondent who advised that the check should be redeposited. This was done and again on March 28, 1985 the same check was dishonored. Thereafter, Mr. Hauser on behalf of Woolworth began eviction proceedings against Respondent's client, Al Stewart, Carol City Management which was renting space from Woolworth for which the check was intended as rent/or security deposit. During or subsequent to this eviction process, Mr. Hauser called and wrote Respondent. On May 10, 1985, Respondent replaced his trust account check with a cashiers check. Woolworth incurred as a result of this action additional legal expenses billed by Mr. Hauser to initiate eviction proceedings and to recover these funds.

A review of the Eagle trust account by Ruga indicates that as of January 31, 1985, there were sufficient funds available in Respondent's account to cover check #367 payable to Woolworth. The same was true as of February 28, 1985. As of March 11, 1985 the date check #367 was presented to Eagle in the amount of $23,450.01 there was a balance in the account of 22,258.12 leaving a shortage of $1,191.89. When the check was represented on March 28, 1985, there was a balance in the account of $22,344.12. As of April 30, 1985, there was a balance in the account of $10,071.87, and the liability of Respondent to Woolworth for check #367 still remained. The source of the remaining $13,447.01 used to purchase the $23,450.01 cashiers check given to Woolworth is still unknown.

b) On December 10, 1985, check #428 in the amount of $750 payable to Murray Fisher in the amount of $750 was dishonored by the bank due to insufficient funds in Respondent's account. The check was represented to the bank on December 23, 1985 and at that time was honored.

c) On December 12, 1985, check #429 in the amount of $1,000 payable to Mayor John Riley was dishonored by the bank due to insufficient funds in Respondent's account. Mr. Riley testified that after he learned that this check bounced he contacted the Respondent, went to his office that same day and the Respondent gave him $1,000 cash to replace the check.

IV. RECOMMENDATIONS AS TO WHETHER OR NOT THE RESPONDENT SHOULD BE FOUND GUILTY

Case No. 72,112

I recommend that the Respondent be found guilty and specifically that he be found guilty of violating Disciplinary Rule 6-101 (A)(3) of the code of Professional Responsibility.

Case No. 72,553

I recommend that the Respondent be found guilty and specifically that he be found guilty of violating Rule 4-8.(4)(c) of the Rules of Professional Conduct.

Case No. 72,024

I recommend that the Respondent be found guilty and specifically that he be found guilty of violating Disciplinary Rule 6-101 (A)(3) of the Code of Professional Responsibility.

Case No. 71,696

I recommend that the Respondent be found guilty and specifically that he be found guilty of violating Article XI, Rule 11.02 (4), Integration Rule of the Florida Bar and Rule 5-1.1 of the Rules Regulating the Florida Bar and Disciplinary Rule 9-102 (B)(4) of the Code of Professional Responsibility and Rule 4-1.5 (B) of the Rules Regulating the Florida Bar.

V. RECOMMENDATION AS TO DISCIPLINARY MEASURE TO BE APPLIED

I recommend that the Respondent be disbarred. This measure is suggested with some degree of reservation since the Respondent is unquestionably a very bright and energetic practitioner who has undertaken to represent many minority clients with minimum financial means who might otherwise not be able to obtain or afford able counsel.

Nevertheless, these same clients are entitled to the same professional courtesy, integrity and quality of representation expected from any member of the Bar who seeks to practice law in this state. Were these incidences that are the subject of these instant isolated in nature, this Referee would be reluctant to recommend such a severe sanction. When viewed however with the Respondent's past disciplinary conduct for neglecting a client's legal matter, trust account irregularities and failure to pay personal bills for work performed which are factually identical to the claims that are the focus of the present proceedings, disbarment appears to be the appropriate discipline.

The Referee is required to deem as admitted Respondent's neglect to pursue the legal claim of Wendy Horner, a client who retained him to sue Keys Realty for defects arising in

her purchase of a home. This circumstance was compounded by Respondent's failure to respond to inquiries from Horner's new attorney that she retained to replace the Respondent. This situation is identical to Count's IV and V of Case No. 70,114 and Count III of Case NO. 70,907 of a prior disciplinary action against the Respondent reported at 534 So. 2d 1157 (Fla. 1988). In those two cases this Referee concluded (although the Supreme Court found insufficient evidence in the record to support the Referee's finding on Count IV of Case No. 70,114) the identical conduct transpired.

In the Seme case, Referee was presented with an identical fact pattern. Respondent claims Seme's misfortune was of his own doing due to his continuous changing of addresses and not having a telephone at all times. Respondent also argues that Seme was a client that expected to be pampered, had trouble getting along with lawyers and was an overall pain to him because he constantly dropped in expecting to see the Respondent without an appointment. Respondent also suggested he had no motive to ignore Seme since the case was undertaken on a contingency fee basis and pursuit of the case would reward Respondent financially.

This Referee finds these contentions and arguments meritless and lacking in substance. There was no evidence but mere speculation that Seme could not deal with any attorneys he utilized prior to or subsequent to engaging the Respondent. Although the record is clear that Seme moved several times during the period he was suppose to be represented by Respondent, he constantly attempted to continue to communicate with the Respondent by telephone and by personally visiting the Respondent's office both with and without an appointment. There was no documentation produced by Respondent of any attempt by him to advise Seme in writing at any of his last known addresses that the Complaint had been dismissed or the necessity that Seme meet with Respondent to file an amended complaint, or that the statute of limitations period was about to expire. Equally significant is the absence of any record in Respondent's file on Seme of dates of meeting with him or talking with him by telephone. In sum, the

Respondent's neglect of Seme's case which effectively precluded any opportunity to recover damages for his injuries is totally inexcusable and his explanations as to what happened unquestionably implausible.

What transpired in the Braman Cadillac case is identical to what occurred in Counts I, II and III of Case No. 70,114 of the prior disciplinary action against the Respondent reported at 534 So. 2d 1157 (Fla. 1988). Respondent refused to accept financial responsibility for services he received and utilized. The circumstances of this allegation suggest that the Respondent employed an indifferent and callous attitude towards those who had a legitimate right to be compensated. This type of conduct fuels a negative attitude from the public to the legal profession. Even in personal transactions attorneys must avoid tarnishing the image of their fellow attorneys by damaging the public's perception of their professional standing.

The circumstances surrounding Respondent's trust account at Eagle Bank from which the twice dishonored check to Woolworth was drawn is similar to Count I of Case No. 70,907 reported in the prior disciplinary action against the Respondent at 534 So. 2d 1157 (Fla. 1988). The trust account check in the amount of $23,450.01 was ultimately paid by Respondent by cashiers check five months after its issuance after it had bounced twice and following several telephone demands by Woolworth's representative. Although there was no evidence presented demonstrating how the Respondent converted these funds for his personal use, it is abundantly clear that he misappropriated his clients trust funds by failing to maintain them at all times for their stated purpose.

Respondent maintains that Woolworth was ultimately paid. This position ignores the issue of improper financial deprivation of funds. Respondent additionally contends that the funds were unavailable at the time the check was issued and that had Woolworth timely presented the check the funds would have been in the account to honor and clear the check. This unacceptable claim is identical to that which he raised in Count I of Case No. 70,907, the previously reported disciplinary

proceeding, and is wholly untenable and nothing short of specious. In effect, Respondent is merely attempting to shift the responsibility of his inappropriate conduct to an innocent party. This Referee questions whether the Respondent ever issued the check payable to Woolworth on January 3, 1985 or even mailed it to Woolworth's attorney on that date since the attorney for Woolworth never received that check until February, 1985.

Respondent failed to present the required trust account records identified in the Complaint during the Bar audit. He argues that since the Bar failed to produce at the Referee proceeding the subpoena served upon him, there is no proof of what he was exactly required to produce. This Referee finds such a contention wholly uncompeling since at no time even after the Bar filed its complaint or for that matter at the instant proceeding were they ever produced. The Referee can only draw one reasonable conclusion and that is that they either never existed, were negligently misplaced, or intentionally destroyed.

IN CONCLUSION, this Referee has recommended the imposition of the ultimate sanction of disbarment. This decision is made with on caveat, and that is, if possible that the disbarment be retroactive to the date of the Courts suspension order of December 8, 1988 reported at 534 So. 2d 1157 (Fla. 1988). The time frame of the acts delineated in four Complaints that are the subject of this Report is the exact period of the matters presided over and documented in this Referee's report that led to the entering of the aforementioned suspension order. Had these additional and similar factual scenarios bee brought to the Referee's attention at that time, disbarment would have been recommended. The situations that are the subject of the instant Report did not occur after the entry of the aforementioned suspension order. The Bar has not accounted to this Referee as to why the instant charges could not have been lodged or assimilated into the prior proceedings since it appears they were known to the Bar and investigated by December 11 and 18, 1987 the dates of the earlier disciplinary hearings.

VI. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD

Respondent is a 36 year old attorney who was admitted

to the Florida Bar on November 23, 1983. Respondent had one prior disciplinary matter referred to and reported by the Florida Supreme Court in Case No. 68,904 that resulted in his suspension on September 26, 1986. He was reinstated on February 12, 1987. The Respondent was suspended for a second time for a period of three years by order of the Supreme Court in an opinion reported at 534 So. 2d 1157 (Fla. 1988) dated December 8, 1988 which he now serving.

VII. STATEMENT OF COST AND MANNER IN WHICH COSTS SHOULD BE PAID

Administrative Charges:	$2000.00
Rule 3-7.5 (K)(1)	
Court Reporter's Attendance:	
(1) at grievance committed hearings	
September 15, 1987	$344.55
November 9, 1987	$376.50
February 4, 1988	$172.15
March 29, 1988	$128.60
(2) at final hearing	
June 9, 1989	$890.60
Executive Express Courier Service	
letter to Mr. Knowles 3/27/89	$8.50
letter to Mr. Knowles 3/28/89	$8.50
letter to Mr. Knowles 6/1/89	$8.50
Witness Travel Expenses	
Jean Seme for hearing 9/15/87	$57.88
Jean Seme for hearing 6/9/89	$144.00
Auditor's Costs	$1205.40
TOTAL -	$5345.18

September 26, 1989

Mark A. Speiser

MARK A. SPEISER (Referee)
Circuit Court Judge

cc: Randi Lazarus, Bar Counsel
David Finger, Counsel for Respondent
Sid White, Clerk of Florida Supreme Court