

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,
Complainant,

vs.

HOWARD A. LEVINE,
Respondent.

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FEB 21 1988
CLERK, SUPREME COURT
By _____
Case No. ~~88-50744~~
TFB File No. 88-50744-02

INITIAL BRIEF

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PRELIMINARY STATEMENT

The Florida Bar, Complainant will be referred to as "The Bar" or "The Florida Bar". Howard Levine, Respondent, will be referred to as "Respondent". The symbol "TR" will be used to designate the transcript of the final hearing held on June 1, 1989.

STATEMENT OF THE CASE AND OF THE FACTS

On April 22, 1988, The Florida Bar filed its complaint charging Respondent with conduct that arose from felony convictions in Florida and Oklahoma.

In Florida, Respondent pled guilty on July 31, 1987, to counts 3 and 210 charging organized fraud in violation of Florida Statutes 871.036 (1st degree felony) and the unlawful operation of boiler rooms in violation of Florida Statutes 5517.312 (3rd degree felony). These counts were contained in a criminal information filed under case No. 87-7195CF-T, Circuit Court, Seventeenth Judicial Circuit, Broward County, Florida.

As in a result of Respondent's guilty pleas in Florida he was adjudged guilty and sentenced to a prison term of thirty (30) months and three (3) years probation.

In Oklahoma, Respondent pled nolo contendere in Case No. 86-657, District Court of Comanche County, Oklahoma to felony counts I, 111, IV and V of a criminal complaint and information.

On September 21, 1987, Respondent was found guilty of the crimes of conspiracy to violate the Oklahoma Securities Act, failure to register as agents, employment of unregistered agents, distribution of unfiled and unapproved sales literature and fraud in the offer and sale of securities.

Respondent was sentenced in Oklahoma to a prison term of thirty (30) months to run concurrent with the Florida sentence.

The criminal informations charge Respondent and others engaged in a scheme or operation by fraud or misrepresentation by falsely representing during the sale of contracted interest in oil and gas drilling ventures, that there was little or no risk involved in such investments. As a result of this scheme Respondent and his Co-defendants were charged with defrauding in excess of \$15,000,000 from investors. Bar's Exhibit 1, page 20, 21. Respondent was also charged with having an interest in or was associated with "boiler rooms" involved in the sale of the oil drilling ventures through fraud, falsification or concealment of facts. Bar's Exhibit 1, page 82.

The actions of Respondent in violation of the Oklahoma Securities Act involved the same scheme to defraud investors as was the subject of the Florida charges. Bar's Exhibit No. 2.

A final hearing was held before the Honorable William L. Gary, Referee, on June 1, 1989. The Bar introduced the judgements and sentences from Florida and Oklahoma as evidence. (TR 6). Respondent testified on his own behalf (TR 7-82), he then presented two witnesses. (TR 82-117, TR 119-123).

On November 13, 1989, the Referee filed a Report finding Respondent guilty of all violations charged and recommended a three (3) year suspension back to the date of his felony suspension, August 1987, and thereafter until he proves rehabilitation. It was recommended that Respondent be required to satisfactorily pass the Florida Bar examination prior to reinstatement.

The Bar filed its Petition for Review on February 1, 1990, pursuant to the direction from the Board of Governors.

SUMMARY OF ARGUMENT

Respondent was found guilty of six felony charges surrounding a conspiracy to commit organized fraud and unlawful use of boiler rooms to further this conspiracy. The Bar sought to disbar Respondent. The Referee disagreed and recommended that Respondent be suspended for three years.

It is the Bar's contention that these felony convictions were particularly egregious because Respondent utilized his talents as an attorney and knowingly participated in schemes to defraud. Thus, disbarment is the appropriate discipline.

ARGUMENT

ISSUE I

THE REFEREE'S FINDING
OF FACT AND DISCIPLINARY
VIOLATIONS COMMITTED MANDATES DISBARMENT

Respondent pled guilty in Florida to two counts of a multi-count criminal information alleging his involvement in a scheme to defraud security investors and the operation of boiler rooms that solicited investors for the scheme using false and misrepresentative information. Respondent also plead nolo contendere to four felony charges in Oklahoma alleging his participation in violating securities laws in failing to register the operations and promoting them. The Oklahoma violations involve the same companies and violations that were the subject of the charges in Florida.

As a result of Respondent's pleas he was found guilty on all counts and received concurrent prison terms of thirty (30) months with probation and fines.

As set forth in Count 3 of Bar's Exhibit No. 1, page 20 Respondent and his Co-defendants engaged in "a scheme or operation by fraud or misrepresentation whereby said defendants did obtain property of an aggravate value of fifty thousand dollars of more from five or more victims...". The information

further alleged that Respondent "did falsely represent or cause to be represented during the course of the sale of contractual interest in oil and gas drilling ventures, that there was little or no risk involved in the investment and in conjunction with certain of those investments that there was no risk whatever, because an already producing well was associated in each investment with a developmental or exploratory well in fact, Defendants knew that such producing wells did not exist or were not of commercially producing quality as represented, that Defendants' investments have never resulted in any well of sufficient production to provide any significant return to investors, and; that investors would in all probability suffer a total loss of their investment money".

The total value of money defrauded in the scheme Respondent took part in his alleged to exceed fifteen million dollars (15,000,000.00) .

The "boiler room" operations were used to promote the sale of the drilling ventures by making false representations of guaranteed returns and concealment of the true facts concerning the ventures. Bar's Exhibit 1, Count 210, page 82.

Respondent has been convicted and adjudged guilty of crimes wherein he conspired and participated in a scheme to defraud millions of dollars from the public. Respondent's convictions are conclusive proof of guilt for purposes of Bar

disciplinary proceedings. The Florida Bar v. Onett, 504 So.2d 388, 390 (Fla.), cert. denied, 108 S.Ct. 150 (1987).

Many cases involving participation in fraudulent schemes and felony adjudications have resulted in disbarment for errant attorneys. In The Florida Bar v. Weinsoff, 498 So.2d 942 (Fla. 1986) the Respondent was adjudged guilty of mail fraud and was disbarred. In The Florida Bar v. Haimowitz, 512 So.2d 200 (Fla. 1987) this Court held that conspiracy to use postal service to execute a scheme to defraud, obtaining property by false and fraudulent pretenses and conspiracy to obstruct interstate commerce warrants disbarment. In The Florida Bar v. Simons, 521 So.2d 1089 (Fla. 1988) this court imposed a twenty year disbarment where Respondent's acts constituted theft and were in furtherance of an attempt to defraud an insurance company. This court ruled in The Florida Bar v. Onett, 504 So.2d 388 (Fla. 1987) that convictions on charges of mail fraud, conspiracy to obstruct interstate commerce, and perjury warranted disbarment.

Recently this court ruled that disbarment was the appropriate discipline for a Florida attorney who pled nolo contendere to a charge of conspiracy to commit organized fraud, a second degree felony; and to a charge of unlawful use of boiler rooms, a third degree felony. The Florida Bar v. Isis, No. 72,644 (Oct 12, 1989). The Bar would ask that this court take notice that Respondent Isis was involved in the same

fraudulent scheme charges against the instant Respondent and was named as a Co-defendant in both counts to which Respondent pled guilty. Bar Exhibit No. 1, counts 3 and 210.

In Isis, supra., this court agreed with the Bar's argument that disbarment was required based on the serious nature of the crime for which Isis was convicted. Since Respondent herein has been convicted of the same serious crimes as in Isis, it is clear that disbarment should be the appropriate discipline in this matter.

In light of this serious nature of the felony conviction and the attendant circumstances, this Court's words of wisdom in The Florida Bar v. Wilson, 425 So.2d 2 (Fla. 1983) are applicable.

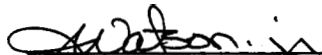
(M)ere suspension would not be just to the public. In the case of a conviction of two felonies, the ultimate penalty, disbarment, should be imposed to insure that an attorney convicted of engaging in illegal conduct involving moral turpitude, who has violated his oath and flagrantly breached the confidence reposed in him as an officer of the court, can no longer enjoy the privilege of being a member of the bar. A suspension, with continued membership in the bar, albeit without the privilege of practicing is susceptible of being viewed by the public as a slap on the wrist when the gravity of the offense calls out for a more severe discipline.

Wilson, at 2.

CONCLUSION

Based on the foregoing reasons and citations of authority,
The Florida Bar respectfully submits that the appropriate
discipline in this matter should be disbarment.

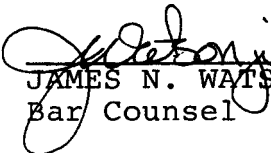
Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the fore-going Initial Brief regarding TFB File No. 88-50744-02 has been forwarded by certified mail# P243 308 817, return receipt requested, to JOHN A. WEISS, Counsel for Respondent, at his record bar address of Post Office box 1167, Tallahassee, Florida, 32302-1167, on this 20th of February 1990.



JAMES N. WATSON, JR.
Bar Counsel