IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

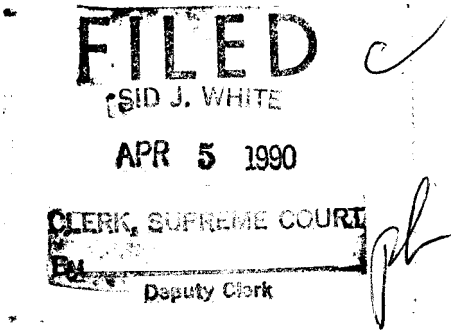
vs.

HOWARD A. LEVINE,

Respondent.
_____/

Case No. 72,327

TFB File No. 88-50744-02



REPLY BRIEF

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SUMMARY OF ARGUMENT

Despite the presence of mitigating circumstances cited by the Referee, the seriousness of the criminal charges of the Respondent require the recommended discipline of the Referee be increased to disbarment.

ARGUMENT

THE APPROPRIATE DISCIPLINE FOR RESPONDENT'S MISCONDUCT IS DISBARMENT.

Respondent places great weight in arguing against his disbarment that he was not guilty of the alleged misconduct and that this fact is supported by an Alford plea in both the Florida and Oklahoma courts.

As set forth in the definitive case of North Carolina v. Alford, 400 U.S.25,27(1970) an Alford plea is "A plea... containing a protestation of innocence when ... a defendant intelligently concludes that his interests require entry of a guilty plea."

In the instant matter Respondent did not submit any evidence of the nature of his plea other than his testimony. On cross examination Respondent acknowledged that at the time he plead guilty to the criminal charges in Florida he did not profess his innocence to the presiding judge. (T-77) Respondent also acknowledged that neither he nor his attorney reviewed the statute concerning the "boiler room" charge before pleading guilty. (T-77) Without such knowledge it is questionable how

Respondent could have intelligently concluded what his bests interests were as required for an Alford plea.

The Bar would argue that for reasons of convenience other than his innocence Respondent pleaded guilty to multiple fraud charges and that the characterization of his plea as an Alford plea is misplaced.

Respondent argues that there was an absence of evidence showing any improper benefit for his role in the criminal conspiracy. (Answer Brief - p.12)

It was shown through Respondent's testimony that he was working with his brother's law firm in Oklahoma but was not a licensed attorney in Oklahoma. Respondent was primarily involved with the promotion of the oil companies conspiring to defraud the investors who purchased the oil leases. Respondent continuously held himself out at the investor's meetings as an attorney and was receiving fees for such services. It is only logical to suggest that as long as the fraudulent scheme existed Respondent would continue to benefit from its activity. The Bar would argue that fees from an illegal activity are improper benefits.

In mitigation Respondent has placed emphasis on certain facts that are incorrect. On page 12 of the Answer Brief

Respondent asserts that he was only named in two of 210 counts of the Florida Information. In reality, Respondent was charged in at least five counts of the Florida information (cts 1, 2, 3, 4 and 210). This is in addition to the Security Law violations charged against Respondent in Oklahoma.

Respondent places a lot of emphasis on the fact that the SEC failed to bring criminal charges. While criminal charges were not brought at the federal level, Respondent was investigated individually for his actions in the investment scheme and entered into a judgment with the SEC whereby he paid $2000.00 into a special fund that was to be used to make restitution to the defrauded investors. (T-112).

Based upon Respondent's testimony that he did not even know his co-defendant Herman Isis, the argument is made that Mr. Isis' involvement was far worse that Respondents.

The only argument to be made in this matter is that both individuals, each an attorney, was involved in and charged for an investment scheme that defraud investors of over $15,000,000).

In the disciplinary case against Mr. Isis this court noted the serious nature of the crime that both Mr. Isis and Respondent were charged with as co-defendants. The Florida

Bar v. Isis, 552 So.2d 912(1989). In Isis this court agreed that the proper discipline for a crime this serious was disbarment.

The Bar would argue that there must come a point that the seriousness of the crime must outweigh any mitigation that may be present in order to protect the public and to preserve the public trust in the legal system. In this instant matter Respondent used his position as an attorney to help defraud an unsuspecting public and the clear message that must be sent is that such conduct cannot be tolerated and that the only appropriate discipline is disbarment.

CONCLUSION

Based upon the referee's finding of guilt and the serious nature of Respondent's crimes the appropriate discipline 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 Reply Brief regarding TFB File No. 88-50744-02 has been forwarded by certified mail# P243 308 810, 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 4th of April 1990.

JAMES N. WATSON, JR.
Bar Counsel